

2014

City of Westbrook Code of Ordinances

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City of Westbrook



Code of Ordinances

Updated 11/17/14

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ARTICLE 1 – POWERS / MUNICIPAL BODY POLITIC AND CORPORATE

The Inhabitants of the City of Westbrook in the County of Cumberland within the corporate limits as now established in the manner provided by law shall continue to be a municipal body politic and corporate in perpetuity under the name of the City of Westbrook referred to in this Charter as the City.

ARTICLE 2 - MAYOR

2.1 Executive Authority of the Mayor.

The executive powers of the City shall be vested wholly in the Mayor, and may be exercised either personally or through the several officers and boards of the City in their departments, under the Mayor's general supervision and control.

2.2 Mayor's Authority Generally.

The Mayor's executive authority shall include the power to organize the City into various Departments in order to promote the effective and orderly management of the City. This authority includes the power to hire and discharge employees in accordance with applicable laws, regulations and contracts.

Notwithstanding the above, the Mayor shall recommend the appointment or removal of the City Clerk, but the full City Council shall have the final decision in regard to such appointment or removal by a vote of at least five (5) members of the City Council.

2.3 Term.

The Mayor shall hold office for the term of three (3) years from the first Monday in December following the Mayor's election, unless sooner removed, and until a successor is elected and qualified.

2.4 Mayor's Authority to Veto Action of the City Council.

Every ordinance, order, resolution or vote of the City Council, except such as relates to its own internal affairs, to its own officers or employees, to the election or duties of the Auditor of Accounts, to the removal of the Mayor, or to the declaration of a vacancy in the office of Mayor, shall be presented to the Mayor for approval.

If not approved the Mayor shall return it, with objections, at the next session of the City Council, and the City Council shall cause such objections to be entered at large upon its journal, and shall proceed to reconsider the same. If upon such reconsideration, it shall be passed by a two-thirds (2/3) vote of all the members of the City Council, it shall have the same effect as if signed by the Mayor.

In case of a vacancy in the office of Mayor when such ordinance, order, resolution or vote is finally passed, it shall go into effect without approval but must be passed by a roll call of a majority of all the members of the City Council.

2.5 Mayor's Authority as to Appropriation and Expenditure.

Whenever any ordinance, order, resolution or vote of the City Council involves an appropriation or expenditure of money, the Mayor may approve it as a whole, or the Mayor may approve or disapprove specific items thereof, and the portions approved shall then be in force in like manner as if no part thereof had been disapproved, and the items disapproved shall thereupon take the course herein provided for orders or ordinances disapproved as a whole.

2.6 Removal of the Mayor.

The Mayor may be removed from office by the City Council for official misconduct or neglect of duty. At any meeting of the City Council, it shall be in order for any member thereof to give written notice, seconded in writing by a majority of at least of all the members of the City Council, of the intention to move, at the next meeting thereof, occurring within not less than ten (10) days, a resolution that the Mayor be removed from office.

Such notice shall specify as particularly as possible the acts of misconduct, or the instances of neglect of duty complained of, shall be entered by the City Clerk in the minutes of the City Council, and the Clerk shall within two (2) days serve a copy thereof, upon the Mayor at the Mayor's residence, and mail a copy to each of the members of the City Council.

At such next meeting of the City Council, the Mayor shall have the right to speak and present a defense, and to be heard by counsel.

The City Council shall vote on the resolution by roll call. If the resolution receives the affirmative vote of three-fourths (3/4) of all the members of the City Council, it shall, upon the service of a copy thereof upon the Mayor, personally or by leaving the same at the Mayor's residence, take effect, and the office of Mayor shall thereupon become vacant. The City Council shall thereupon cause a warrant for a new election for mayor to be issued and such further proceedings shall be had as are provided herein, for the case of a failure to elect a Mayor. If the resolution fails to receive the affirmative vote of three-fourths (3/4) of all the members of the City Council, it shall have no effect, and shall not be reintroduced during that meeting of the City Council.

2.7 Mayor to Hold No Other Position.

During the Mayor's term of office, the Mayor shall receive no salary or compensation for discharging the duties of any other office established by or under the provisions of this Charter. During the Mayor's term, the Mayor shall be ineligible to serve as an employee of the City or School Department.

ARTICLE 3 – CITY COUNCIL.

3.1 Legislative Authority of the City Council.

The legislative powers of the City shall be vested in the City Council which shall consist of seven members, one member elected by the legal voters from each of the five wards of the City plus two at large members elected by the legal voters of the entire City. The seven City Councilors shall constitute the Municipal Officers of the City of Westbrook.

The City Council shall have power to make and establish ordinances and bylaws for the management of its fiscal, prudential and municipal affairs, as herein and by general law provided, without the sanction of any court or justice thereof; provided, however, that all bylaws, ordinances and regulations now in force in the City of Westbrook shall, until they expire by limitation, or be revised or repealed by the City Council, remain in force.

The City Council shall, so far as not inconsistent with this Charter, have and exercise all the legislative powers of municipalities, and have all the powers and be subject to all the liabilities of Municipal Officers, under the general laws of this state, including the powers given to the inhabitants of municipalities and to the Municipal Officers relating to borrowing of any kind.

The City Council shall not authorize the erection of a school building, or of any addition thereto, nor pass any appropriation for such purpose until plans for same have been approved by vote of the School Committee, and such approval has been certified in writing to the City Council by the Chair of said Committee, all ordinances and any order or resolution which involve:

- (1) The appropriation or expenditure of money which exceeds three thousand dollars (\$3,000.00),
- (2) The laying of an assessment,
- (3) The borrowing of money, or
- (4) The granting to any person or corporation any right in, over, or under any street or other public ground of the City, shall require the affirmative votes of a majority of all the members of the City Council for its final passage, which shall be by a roll call vote.

Every such ordinance, order or resolution shall be read twice, with an interval of at least seventy-two (72) hours between the first and second readings, before it is in order for final passage; but if such a matter is amended after its first reading, it shall be tabled for a period of at least seventy-two (72) hours before it may be voted upon for final passage.

All other ordinances, orders or resolutions shall require a single reading and require the affirmative votes of a majority of all of the members for passage.

No sum appropriated for a specific purpose shall be expended for any other purpose, and no expenditure shall be made nor liability incurred by or in behalf of the city, until an appropriation has been duly voted by the City Council sufficient to meet such expenditure or liability, together with all the prior unpaid liabilities which are payable out of such appropriation; provided, however, that after the expiration of the financial year, and until the passage of the regular annual appropriations liabilities payable out of a regular appropriation to be contained therein may be incurred to an amount not exceeding one-third (1/3) of the total of such appropriation for the

preceding year.

The City Council shall establish by ordinance the regular salaries or remuneration of the Mayor and members of the City Council, but any ordinance changing such salary or remuneration shall not take effect until the municipal year succeeding the term for which the Mayor and Council were elected.

3.2 City Council President.

As described herein the City Council shall be led by a President who shall be elected by majority vote by the members of the City Council and shall preside over meetings of the City Council. The President may appoint another Council member to serve as Vice President to preside over City Council meetings in the President's absence. The appointment of a Vice President shall be affirmed by a majority vote of all of the members of the City Council. In case of the absence of the President or Vice President, the City Council shall choose a President, pro tempore, by a majority of those members present and voting. In case of a vacancy in the office of President of the City Council, by death, resignation or otherwise, the same shall be filled for the unexpired term by a majority vote of those members present voting by roll call.

The Council President shall have the authority to organize the Council into various committees for the purpose of consideration of ordinances, resolutions or other matters, however, final passage of any matter shall be by the City Council acting as a whole as described above.

3.3 President of Council to Fill Vacancy in Mayor's Office; Authority.

Whenever there shall be a vacancy in the office of Mayor, and whenever by reason of sickness, or absence from the City, or other cause, the Mayor shall be disabled from performing the duties of the office, the President of the City Council shall act as Mayor and possess all the rights and powers of Mayor during such vacancy or disability, except that when so acting as Mayor, the President of the City Council shall not have the power of appointment or removal unless thereto in any instance authorized by vote of the City Council.

3.4 City Council Meetings.

The City Council shall hold a regular meeting at least monthly. The agenda for the regular meeting shall be determined by the City Council President. The City Council shall by ordinance or order determine the time of holding its stated or regular meetings, and may also, in like manner, determine the manner of calling special meetings of its members in addition to those which may be called by the Mayor.

The Mayor may at any time call a special meeting of the City Council by causing written notification thereof, together with a statement of the subject of the meeting, to be left at the usual place of residence of each member of the City Council, at least twenty-four (24) hours before the time appointed for such meeting.

A majority of all the members of the City Council shall constitute a quorum, but a smaller number may adjourn from time to time. At least twenty-four (24) hours notice of the time and place of holding such adjourned meeting shall be given to all members who were not present at

the meeting from which adjournment was taken.

3.5 Council to Determine Its Own Rules and Qualifications.

The City Council shall determine the rules of its own proceedings, and be judge of the election returns and qualifications of its own members.

3.6 Election of Auditor of Accounts.

The City Council shall, as soon as may be after its organization in each year, choose an Auditor of Accounts, who shall hold office for the term of one (1) year, and until a successor is chosen and qualified. A majority of the votes of all the members of the City Council, taken by roll call, shall be necessary for the choice of such auditor; and the auditor may be removed by an affirmative vote of a majority of all the City Council taken by roll call.

3.7 Members of City Council to Hold No Other Office.

No member of the City Council shall hold any other office in or under the City government, have the expenditures of any money appropriated by the City Council, or act as counsel in any matter before the City Council or any Committee thereof; and no person shall be eligible for appointment to any municipal office established by the City Council during any municipal year within which he was a member thereof, until the expiration of the succeeding municipal year.

3.8 Assessments.

All taxes shall be assessed, apportioned and collected in the manner prescribed by the laws of this state relative to municipal taxes; but the City Council may establish further or additional provisions for the collection thereof.

3.9 City Council to Establish Fire Department.

The City Council shall establish a fire department for said City, to consist of such officers and personnel as it may prescribe; and it may make regulations for the government of such Department.

3.10 City Council to Establish Police Department.

The City Council shall establish a police department for said City, to consist of such officers and personnel as it may prescribe, and shall make regulations for the government of such department.

3.11 Pension Systems.

The City Council, subject to the established powers of the Mayor, may institute a system of pensions for all municipal employees, including any benefits to be paid if such employee shall die or become disabled while in the performance of his duties. Nothing herein shall be construed to decrease existing benefits to municipal employees.

ARTICLE 4 - SCHOOL COMMITTEE

4.1 General Authority of the School Committee.

The general management and control of the public schools and of the school property, buildings and grounds, including insurance and repairs on buildings, shall be vested in a School Committee of seven (7), the members, one member elected by the legal voters from each of the five wards of the City plus two at large members elected by the legal voters of the entire City.

The School Committee elected as provided herein shall, in addition to the powers conferred upon them by this act, be held to perform all the duties and be invested with all the rights and powers of school committees under the general laws of the state.

4.2 School Committee Chair.

The School Committee shall be led by a Chair who shall be elected by majority vote by the members of the School Committee and shall preside over meetings of the School Committee.

4.3 School Committee to Appoint Superintendent.

The School Committee shall appoint a qualified person, not a member of the School Committee, to be Superintendent of Schools, and may adopt such rules and regulations for the management of the schools as are not inconsistent with the laws of the state.

The Superintendent of Schools need not be an inhabitant of the City. The Superintendent shall be secretary and executive agent of the School Committee which Committee shall fix the Superintendent's salary, to be paid from the city treasury as salaries of teachers are paid.

4.4 Compensation of School Committee Members.

The members of the School Committee shall receive such compensation for their services as shall be established by a Council ordinance.

4.5 School Department Expenditure and Appropriation in Excess of Three Thousand Dollars.

Any appropriation or expenditure of money by the School Department which exceeds three thousand dollars (\$3,000.00) shall, except in cases of emergency, require the affirmative votes of a majority of all of the members of the School Committee for its final passage, which shall be taken by a roll call vote. Every such appropriation or expenditure shall be read twice, with an interval of a least seventy-two (72) hours between the first and second reading, before it is an

order for final passage; but if such a matter is amended after its first reading, it shall be tabled for a period of at least seventy-two (72) hours before it may be voted upon for final passage.

ARTICLE 5 - CITY CLERK

The City Clerk shall be the Secretary of the City Council and shall perform such duties as are usually performed by clerks of municipal corporations and all such duties as are required by the laws of this State and by this Charter. The City Clerk shall be the custodian of the Official Seal of the City. The City Clerk shall keep a journal containing a record of the proceedings of the City Council and a record at large of all votes taken, and shall sign and attest all ordinances and resolutions of the City Council.

ARTICLE 6 - ELECTIONS

6.1 Division into Wards; Review and Alteration of Boundaries.

For the purpose of holding elections, the territory of said City shall be divided by ordinance by the City Council into five (5) wards, to contain as near as may be consistently with well-defined limits, an equal number of legal inhabitants; and it shall be the duty of the City Council once in ten (10) years, and not oftener than once in five (5) years, to review, and, if necessary, to alter such wards in such a manner as to preserve, as nearly as may be, an equal number of legal inhabitants in each ward.¹

6.2 Mayor, City Councilors and Other Officers; How Elected, Terms.

The municipal elections shall take place on the first Tuesday after the first Monday in November and shall be conducted in the manner provided by the laws of this state. The Mayor, two (2) City Councilors and two (2) School Committee members shall be elected from the citizens at large, by the legal voters of the City voting in their respective wards. One (1) City Councilor, one (1) School Committee member, one (1) Warden and (1) Ward Clerk shall be elected in each ward, being residents in the ward where elected. The City Council may divide any ward into two (2) or more precincts and additional wardens and ward clerks and wardens may be elected by each precinct by the legal voters therein.

All said officers shall be elected by a plurality of the votes given and shall hold office for three (3) years from the first Monday in December, and until others shall be elected and qualified in their places.

¹ **State law reference** – Effective date of ward changes, 30-A M.R.S.A. § 2503.

6.3. Implementation of Staggered Terms for Mayor, City Councilors and School Committee Members

At the November 2013 municipal election, the Mayor, one (1) City Councilor At-Large, the Ward 1 City Councilor, the Ward 2 City Councilor, the Ward 5 City Councilor and Wardens and Ward Clerks for each Ward shall be elected to hold office for three (3) years; the person elected to the seat of the School Committee member At-Large whose four-year term is ending shall be elected to hold office for three (3) years, and one (1) City Councilor At-Large shall be elected to hold office for two (2) years; the Ward 3 School Committee member shall be elected to hold office for three (3) years and the Ward 3 City Councilor shall be elected to hold office for two (2) years; the Ward 4 School Committee Member shall be elected to hold office for three (3) years and the Ward 4 City Councilor shall be elected to hold office for two (2) years. All remaining School Committee members shall commence three year terms with the November 2015 municipal election.

6.4 Vacancies in Office of Warden or Ward Clerks.

A vacancy occurring in the office of warden or ward clerk by death, resignation or removal from the City shall be filled by appointment of the City Clerk, subject to confirmation by a majority of the City Council members present and voting.

Whenever two (2) or more persons are to be elected to the same office, the several persons up to the number to be chosen, receiving the highest number of votes shall be deemed and declared to be elected.

If it shall appear that there is no choice of Mayor, or any of the other officers to be elected from the citizens at large, or from any of the several wards, or if the person elected Mayor, or any person or persons elected to any other of the offices aforesaid, shall refuse to accept the office, or shall die before qualifying, or if a vacancy in the office of Mayor shall occur subsequently and more than three (3) months previous to the expiration of the municipal year, warrant shall forthwith be issued for a new election, and the same proceedings shall be had in all respects as hereinbefore provided, and shall be repeated until such election is completed.

A vacancy occurring in the City Council by death, resignation or removal from the City of any member thereof, shall be filled for the unexpired term by a majority vote of the remaining members present and voting, voting by roll call; and if such vacancy be occasioned by the death, resignation or removal from the City of a member elected by a ward, the same shall be filled from the ward where it occurs.

A vacancy occurring in the School Committee by death, resignation or removal from the city, of any member thereof, shall be filled for the unexpired term by a majority vote of the remaining members present and voting, from the ward where it occurs, or if at large from any ward.¹

6.6 Special municipal elections; establishment of initiative and referendum procedure.

¹ **State law reference** – A person receiving a plurality of the votes in a municipal election is elected, 30-A M.R.S.A. § 2555.

Special municipal elections may be held from time to time for municipal purposes when called by the Mayor and City Councilors; and the City Council shall establish by ordinance an initiative and referendum procedure to be ratified by a plurality vote of the voters of said City according to the rights secured to all citizens by the state constitution. Any subsequent amendments or revisions of the initiative and referendum ordinance shall require the same ratification by the voters as required for the adoption of said ordinance.

6.7 Mayor, City Councilors and School Committee Members to be sworn; how, when and by whom.

The Mayor-elect, City Councilors-elect and School Committee Members-elect shall on the first Monday of December, meet and be sworn to the faithful discharge of their duties.

The oath shall be administered by the City Clerk or any notary public or dedimus justice, and shall be duly certified on the journal of the City Council.

In case of the absence of the Mayor-elect or if a Mayor shall not then have been elected, the oath of office may at any time thereafter be administered to the Mayor-elect in the presence of the City Council; and at any time thereafter, in a like manner, the oath of the office may be administered to any member of the City Council or School Committee member who has been previously absent, or has been subsequently elected; and every such oath shall be duly certified as aforesaid.

6.8 President of Council to be Elected.

After the oath has been administered to the City Councilors present, they shall be called to order, at their first organization by the City Clerk, or in case of the absence of the Clerk, by the longest-serving member present.

The person so calling the City Council to order shall proceed to call the roll of the members and each member shall declare their choice for President of the City Council, who shall be a member thereof. If no quorum is present, an adjournment shall be taken to a later hour, or to the next day, and thereafter the same proceedings shall be had from day to day, until a quorum shall be present. If any person receives a majority of the votes of all the members of the City Council present, such person shall be declared chosen President thereof. If, on the first day on which a quorum is present no person receives such majority, the roll call shall be repeated until some person receives the vote of such majority, or an adjournment is taken to the succeeding day, and on such succeeding day when a quorum is present, a plurality of those voting shall be sufficient for an election.

The President may be removed from the office by the affirmative vote of five (5) members of the City Council taken by roll call.

ARTICLE 7 - CANDIDATES FOR OFFICE

7.1 Eligibility of Persons Elected to Office; When Office Becomes Vacant.

No person shall be eligible for election to any office established by this act, unless at the time of election they shall have been a citizen of the United States and a resident of the City for at least three (3) months.

Any office established by or under this act shall become vacant if the incumbent thereof ceases to be a resident of the City.

7.2 Nomination by Caucus.

Nomination of candidates for office shall be determined at the caucus of each political party or by petition. Nomination of candidates for City Council members and School Committee members to represent the respective Wards shall be made in the ward caucus of each political party in each Ward. Nomination of candidates for Mayor and at-large City Council members and School Committee members, Ward Clerks and Wardens shall be made by the caucus as a whole. Caucuses for the purpose of nominating candidates shall be held not less than sixty (60) days prior to the day on which a municipal election is to be held. Notice of a caucus for the purpose of nominating candidates for City office shall be published in a newspaper having general circulation in the City at least three (3) and not more than seven (7) days before it is held. The procedure for calling, giving notice and voting at caucuses shall follow the provisions for municipal caucuses in Title 21-A M.R.S.A. Section 311 *et seq.* as may be amended. No political party designation shall be included on the ballot for any municipal office.

7.3 Nomination by Petition.

Access to the ballot may be determined by the filing of a petition with the City Clerk. Title 21-A M.R.S.A. Section 351 *et seq.* as may be amended is incorporated by reference and made a part hereof except as amended below:

Number of Signatures:

Office of Mayor and At-Large Offices. Petitions must be signed by a number of registered voters of the City equal to at least fifteen (15), but not more than twenty-five (25) from each of the five wards of the City.

Ward Offices. Petitions must be signed by a number of registered voters of the City equal to at least twenty-five (25) , but not more than fifty (50) from the ward for which the candidate is seeking office.

When Signed. The petition may not be signed more than one hundred twenty (120) days prior to the election in which it is to be used.

Subpart B. Related Laws

DIVISION 1. SACCARAPPA CEMETERY

Sec. 1. City to manage land.

The City of Westbrook, a municipal corporation created and existing by law and located in the County of Cumberland, is hereby authorized to assume control, care, and management of all land now included within the boundaries of what is known as the Saccarappa Cemetery, located within the limits of said City of Westbrook. (Public Law of 1913, Ch. 43, § 1)

Sec. 2. Act not to disturb title to land; council to regulate land use.

This act shall in no way disturb the title to any land within the bounds of said cemetery, except that no owner shall dispose of any land therein to be used for any purpose other than a burial lot, but the city council may establish such ordinances and regulations, not inconsistent with the constitution and laws of this state, as shall be needful to the proper use and care of said cemetery, and impose fines and penalties for a breach thereof not exceeding twenty dollars (\$20.00) for any one (1) offense, which may be recovered to the use of said city, by an action of debt, or on complaint before the municipal court of said city. (Public Law of 1913, Ch. 43, § 2)

Sec. 3. Council to manage, control cemetery; authority to delegate control.

The direct control and management of said cemetery is hereby vested in the city council, but the city council may exercise this power through the board of trustees of Woodlawn Cemetery, which board shall have no power or authority in the matter, other than granted it by said city council. (Public Law of 1913, Ch. 43, § 3)

Approved, March 4, 1913.

CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

Sec. 1-1. How Code designated and cited.

The ordinances embraced in the following chapters and sections shall constitute and be designated the "Code of Ordinances, City of Westbrook, Maine," and may be so cited.¹

Sec. 1-2. Rules of construction and definitions.

In the construction of this Code, and of all ordinances, the rules and definitions set out in this section shall be observed, unless such construction would be inconsistent with the manifest intent of the city council. The rules of construction and definitions set out herein shall not be applied to any section of this Code which shall contain any express provision excluding such construction, or where the subject matter of context of such section may be repugnant thereto.

Generally. All general provisions, terms, phrases and expressions contained in this Code shall be liberally construed in order that the true intent and meaning of the city council may be fully carried out.

In the interpretation and application of any provisions of this Code, they shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Where any provision of the Code imposes greater restrictions upon the subject matter than the general provision imposed by the Code, the provision imposing the greater restriction or regulation shall be deemed to be controlling.

City shall mean the City of Westbrook, Maine.

City council, council. Whenever the words "council" or "city council" are used, they shall be construed to mean the city council of the City of Westbrook, Maine.

Computation of time. Whenever a notice is required to be given or an act to be done a certain length of time before any proceeding shall be had, the day on which such notice is given, or such act is done, shall not be counted in computing the time, but the day on which such proceeding is to be held shall be counted.

Corporate or city limits. The term "corporate limits" or "city limits" shall mean the legal boundaries of the City of Westbrook, Maine.

County. The words "the county" or "this county" shall mean the County of Cumberland in the State of Maine.

Delegation, of authority. Whenever a provision appears requiring the head of a department or some other city officer to do some act or perform some duty, it is to be construed to authorize the head of the department or other officer to designate, delegate and authorize subordinates to perform the required act or perform the duty unless the terms of the provision or section specify otherwise.

¹ **State law reference** – Municipal authority to codify, 30-A M.R.S.A. § 3004.

Gender. A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations as well as to males.

Joint authority. All words giving a joint authority to three (3) or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

Mayor shall mean the mayor of the city.

Month. The word "month" shall mean a calendar month.

Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

Number. A word importing the singular number only may extend and be applied to several persons and things as well as to one person and thing.

Oath. The word "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases, the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

Officials, boards, commissions. Whenever reference is made to officials, boards and commissions by title only, i.e., "City Council," "City Clerk," "the Mayor," etc., they shall be deemed to refer to the officials, boards and commissions of the City of Westbrook.

Or, and. "Or" may be read "and" and "and" may be read "or" if the sense requires it.

Owner. The word "owner," applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership or joint tenant, of the whole or of a part of such building or land.

Person. The word "person" shall extend and be applied to associations, clubs, societies, firms, partnerships and bodies politic and corporate as well as to individuals.

Personal property includes every species of property except real property, as herein described.

Preceding, following. The words "preceding" and "following" mean next before and next after, respectively.

Property. The word "property" shall include real and personal property.

Real property shall include lands, tenements and hereditaments.

Shall. The word "shall" is mandatory.

Sidewalk. The word "sidewalk" shall mean any portion of a street between the curb line and the adjacent property line, intended for the use of pedestrians, excluding parkways.

Signature or subscription includes a mark when the person cannot write.

State. The words "the state" or "this state" shall be construed to mean the State of Maine.

Street. The word "street" shall be construed to embrace streets, avenues, boulevards, roads, alleys, lanes, viaducts and all other public ways in the city, and shall include all areas thereof embraced between the property lines or dedicated to the public use.

Tenant or occupant. The words "tenant" or "occupant," applied to a building or land, shall include any person holding a written or oral lease or who occupies the whole or a part of such buildings or land, either alone or with others.

Tense. Words used in the past or present tense include the future as well as the past and present.

Written or in writing shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

Year. The word "year" shall mean a calendar year, except that the municipal financial year shall be on a fiscal year basis from July first through June thirtieth of each year commencing on July 1, 1982.¹ (Ord. of 1-26-81, § 1)

Sec. 1-3. Catch lines of sections.

The catch lines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catch lines, are amended or reenacted.

Sec. 1-4. Amendments to Code.

All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion herein, or in the case of repealed chapters, sections and subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the Code by omission from reprinted pages affected thereby and the subsequent ordinances as numbered and printed or omitted, in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time as this Code of Ordinances and subsequent ordinances numbered or omitted are readopted as a new Code of Ordinances by the city council.

Sec. 1-5. Unauthorized alteration or tampering with Code.

It shall be unlawful for any person in the city to change or amend, by additions or deletions, any part or portions of this Code, or to insert or delete pages, or portions thereof, or to alter or tamper with such Code in any manner whatsoever which will cause the law of the city to be misrepresented thereby.

Sec. 1-6. Effect of repeal of ordinances.

When any ordinance repealing a former ordinance, clause or provision shall be itself repealed, such repeal shall not be construed to revive such former ordinance, clause or provision unless it shall be therein so expressly provided.

The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed or cause of action arising under the ordinance repealed.

Sec. 1-7. Severability of parts of Code.

¹ **State law reference** – For similar provisions, see 1 M.R.S.A. § 72.

The sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

Sec. 1-8. General penalty for violation of Code; continuing violations.

Whenever in this Code or in any ordinance of the city any act is prohibited or is made or declared to be unlawful or a misdemeanor, or whenever in such Code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful or a misdemeanor, where no specific penalty is provided therefor, the violation of any such provision of this Code or any ordinance shall be punished by a fine of not more than two hundred fifty dollars (\$250.00), plus costs. All fines shall be recovered on complaint to the use of the city. Each day any violation of any provisions of this Code or of any ordinance shall continue shall constitute a separate offense. (Ord. of 2-3-86)

Chapter 2

ADMINISTRATION

- Art. I.** [In General](#), §§ 2-1 - 2-12
- Art. II.** [City Council](#), §§ 2-13 - 2-50
- Art. III.** [Administrative Officers](#), §§ 2-51 - 2-185
- Div. 1. Generally, §§ 2-51 - 2-62
- Div. 2. Administrative Assistant, §§ 2-63 - 2-73
- Div. 3. Auditor, §§ 2-74 - 2-93
- Div. 4. City Clerk, §§ 2-94 - 2-99
- Div. 5. City Electrician, §§ 2-100 - 2-104
- Div. 6. City Engineer, §§ 2-105 - 2-118
- Div. 7. City Physician, §§ 2-119 - 2-125
- Div. 8. City Solicitor, §§ 2-126 - 2-135
- Div. 9. Code Enforcement Officer, §§ 2-136 - 2-145
- Div. 10. Director of Public Works, §§ 2-146 - 2-156
- Div. 11. Director of Finance, §§ 2-157 - 2-185
- Art. IV.** [Finance](#), §§ 2-186 - 2-213
- Div. 1. Generally, §§ 2-186 - 2-203
- Div. 2. Purchasing Procedure, §§ 2-204 – 2-213
- Art. V.** [Police, Fire/Rescue and Communications Personnel](#), §§ 2-214 - 2-264
- Art. VI.** [Planning Board](#), §§ 2-265 - 2-284
- Art. VII.** Assessor and Board of Assessment Review, §§ 2-285 - 2-286
- Art. VIII.** [Municipal Fiscal Year](#), §§ 2-287 - 2-299
- Art. IX.** [Ethics and Conflicts of Interest](#), §§ 2-300 – 2-309
- Art. X.** [Legal Counsel and Indemnification](#), §§ 2-310
- Art. XI.** [Constables](#), §§ 2-311 – 2-315

ARTICLE I. IN GENERAL

Sec. 2-1. Seal described.

The seal of the city, which was adopted on June 4, 1891, by vote of the city government, is described as follows:

In the center of the seal is a facsimile of the vessel in which Colonel Thomas Westbrook, for whom the city was named, came to Falmouth, bearing the king's commission to select masts for the Royal Navy. Surmounting this is the crest of the Westbrook Family, a mailed knee and foot. Around the seal are the words "City of Westbrook," and the date 1814, date of incorporation of the town, and 1891, date of incorporation of the city.¹

¹ **State law reference** – Municipal authority to adopt a seal, 30-A M.R.S.A. § 2002.



Sec. 2-2. Assessors to maintain index of deeds, instruments.

It shall be the duty of the assessors for the city to keep or cause to be kept an accurate index of all deeds of lands purchased by or sold by the city, including tax deeds acquired by the city and any and all instruments of transfer or real estate in the name of the city, and such instruments shall be safely kept on behalf of the city in a place of safe storage as shall be determined by the board of assessors. (Ord. of 8-11-59)

Sec. 2-3. Standard of conduct relative to city contracts.

No city officer, employee or agent shall solicit or accept any gratuity, favor or anything of monetary value from any contractor or potential contractor with the city relative to the procurement of any supplies, equipment, construction and/or other services with municipal, state and/or federal grant funds; and the offering and/or giving of any such matter of monetary value by such a contractor or their agents to any city officer, employee or agent is hereby prohibited. A violation of the provisions of this section shall subject the offending municipal employee to disciplinary action, including discharge of employment, and in addition thereto all violators shall be subject to the penalty provisions of section 1-8 of the city Code. (Ord. of 4-19-76)

Sec. 2-4. Voting on expenditures in excess of \$3,000.00.

Any ordinance, order, resolution or other authorization of expenditures which involves the expenditure of more than three thousand dollars (\$3,000.00) by the Westbrook City Council or the Westbrook School Committee shall be voted upon twice by the body adopting such ordinance, order, resolution or authorization with an interval of at least seventy-two (72) hours between the first vote and the second and final adoption thereof. Second reading and final passage of any such ordinance, order or resolution shall require the affirmative votes of a majority of all of the city council or school committee as the case may be and shall be by roll-call vote. (Ord. of 9-13-93)

Secs. 2-5 - 2-12. Reserved.

ARTICLE II. CITY COUNCIL

Sec. 2-13. Time of regular meetings.

The council shall hold regular meetings on the first Monday of each month at 7:00 p.m. Whenever a regular meeting falls on a legal holiday, the meeting shall be held the following Monday night at the same time. (Ord. of 2-5-96)

Sec. 2-14. Quorum established.

At all meetings of the council a majority shall constitute a quorum.

Secs. 2-15 – 2-39. Repealed.

(Ord. of 2-5-96)

Secs. 2-40 - 2-50. Reserved.

ARTICLE III. ADMINISTRATIVE OFFICERS¹

DIVISION 1. GENERALLY

Sec. 2-51. Administrative officers established.

By the provisions of section 30 of the charter, the following administrative officers are hereby ordained and established: Administrative assistant, director of human resources, city electrician, city engineer, city physician, city solicitor, constables, director of civil defense, director of public works, electrical inspector, health and license inspector, measurers of wood and bark, regents of Memorial Library, surveyors of lumber; trustee of Woodlawn Cemetery, city arborist.² (1942 Rev. Code, Ch. VII, § 1; Ch. IX, § 1; Ch. XXXVIII, § 1; Ch. XXXIX, § 1; Ord. of 12-19-50; Ord. of 6-20-61; Ord. of April 1963; Ord. of 8-23-63; Ord. of 9-14-64; Ord. of 4-6-70; Ord. of 12-11-72; Ord. of 7-17-95)

Sec. 2-52. Appointments by mayor.

Unless otherwise specified, the administrative officers enumerated in section 2-51 of this Code shall be appointed by the mayor without the approval of the council. (1952 Rev. Code, Ch. VII, § 1; Ch. IX, § 2; Ch. XXXVIII, § 1; Ch. XXXIX, § 1)

Sec. 2-53. Appointment of administrative officers; terms.

The trustee of Woodlawn Cemetery shall hold office for three (3) years and the regent of Memorial Library for five (5) years. Under section 30 of the charter, the remaining administrative officers shall be appointed on the first Monday of January, annually, or as soon as may be thereafter, and shall hold their respective offices for the term of one (1) year from the first Monday of January unless sooner removed. (1942 Rev. Code, Ch. VII, § 1; Ch. IX, § 3; Ch. XXXVII, § 1; Ch. XXXIX, § 1; Ord. of 6-20-61; Ord. of 9-14-64; Ord. of 4-6-70)

Sec. 2-54. Reappointment of administrative officers appointed by mayor and confirmed by council.

Any person who has been appointed an administrative officer with the approval of a three-quarter (3/4) vote of the council may be reappointed by the mayor for a subsequent and successive one (1) year term of office without the approval of the council but all such terms must be successive. (Ord. of 6-20-61; Ord. of 9-14-64; Ord. of 4-6-70)

Sec. 2-55. Mayor's authority to manage, control city property.

The construction, care, custody, management and repair of all city property not expressly intrusted to some department of the city shall be under the direct management and control of the mayor. (1942, Rev. Code, Ch. XI, § 1)

Sec. 2-56. Salaries of city officials.

All salaries of city officials shall be established by ordinance by the council and such ordinances shall in no way be affected by the adoption of this Code.³ (1942 Rev. Code, Ch. VII, § 2; Ord. of 6-20-61; Ord. of 9-14-64; Ord. of 4-6-70)

Sec. 2-57. Reports of administrative officers.

¹ **Charter reference** – Mayor's appointive powers, § 24.

² **State law reference** – Municipal authority to appoint constables, 30-A M.R.S.A. § 2673.

³ **Charter reference** – Council to establish salaries of officers by ordinance, § 33.

All administrative officers of the city shall submit an annual report to the mayor. Such report shall be due no later than the last day of January, and it should cover the activities of their respective departments during the preceding year.

In addition to an annual report, the administrative officers shall make such periodic reports as are required by the mayor.

Secs. 2-58-2-62. *Reserved.*

DIVISION 2. CITY ADMINISTRATOR

Sec. 2-63. Appointment; approval of council.

The city administrator shall be appointed by the mayor subject to the approval of a three-fourths (3/4) vote of all the members of the council by a roll-call vote. (Ord. of 6-20-61; Ord. of 2-9-04)

Sec. 2-64. Removal procedure.

Any appointee to the office of city administrator may be removed from office by the mayor, by a written order, for any cause which he shall in his official discretion deem sufficient, which cause he shall assign in his order of removal in accordance with the provisions of section 24 of the Charter. (Ord. of 6-20-61; Ord. of 2-9-04)

Sec. 2-65. Duties generally.

The city administrator shall prepare and furnish such data and statistical reports relative to the operation of the municipal affairs of the city and its various departments as the mayor or the council may from time to time require, including but not limited to the following:

- (a) Prepare and present to the council with the concurrence of the mayor periodic reports of the activities of the city's various departments including their receipts and expenditures.
- (b) Prepare and present to the council with the concurrence of the mayor an annual report of the operation and cost of the city government for the preceding fiscal year and a proposed budget for the next fiscal year.
- (c) Perform such other municipal administrative duties as the mayor or the council may from time to time prescribe. (Ord. of 6-20-61; Ord. of 2-9-04)

Sec. 2-66. Assistant to be executive assistant, purchasing agent.

The city administrator shall be the executive assistant to the mayor, and the purchasing agent for the city. (Ord. of 6-20-61; Ord. of 2-9-04)

Secs. 2-67-2-73. *Reserved.*

DIVISION 3. AUDITOR¹

Sec. 2-74. Council to select and remove; term; alternate auditor.

¹ **Charter reference** – Selection, term and removal of the city auditor, § 13; **State law reference** – Municipal accounts and audits generally, 30-A M.R.S.A. §§ 5821-5826.

The council shall, as soon as may be after its organization each year, choose an auditor of accounts, who shall hold office for the term of one (1) year, and until his successor is chosen and qualified.

A majority of the votes of all the members of the council taken by roll call shall be necessary for the choice of such auditor, and he may be removed by the affirmative vote of a majority of all the council taken by roll call.

The council may appoint an alternate auditor of accounts, subject to the provisions of this chapter, who shall be available to perform the duties of the city auditor in his absence. (1942 Rev. Code, Ch. IV, § 1; Ord. of 4-18-89)

Sec. 2-75. Expiration of term.

The auditor of accounts shall hold office until the third Monday in January and until his successor shall be qualified. (1942 Rev. Code, Ch. XXII, § 1)

Sec. 2-76. Knowledge of bookkeeping required.

The auditor of accounts shall possess a practical knowledge of bookkeeping. (1942 Rev. Code, Ch. IV, § 2)

Sec. 2-77. Vacancy to be filled.

When for any cause, the office of auditor of accounts shall become vacant, the council shall, at the next meeting thereafter, elect his successor by a roll-call vote as provided by the charter for the election of an auditor. (1942 Rev. Code, Ch. IV, § 9)

Sec. 2-78. Bond, sureties.

The auditor of accounts shall be sworn to the faithful performance of the duties of his office and give bond in such sum as the council may prescribe with sureties to be approved by the council for the faithful performance of his duties, the delivery to his successor, or to the treasurer, of all books, accounts, papers and other documents and other property which shall belong to such office.¹ (1942 Rev. Code, Ch. IV, § 2)

Sec. 2-79. Closing annual accounts.

In the discharge of the auditor's duties and after the expiration of the term of office of the council by whom he was elected, he shall have the assistance of the committee on accounts and the committee on finance of the council, who are hereby instructed to render their assistance in the approval and payment of all bills which have been incurred by authority of the council, including all salaries, the school bills for the completion of the school year, which bills shall have the approval of the outgoing school committee, and all notes and bonds of the city paid by the city prior to the third Monday in July, but not including the bills for the current expenses of the city, such as road bills, the support of the poor, etc., incurred later than the last day in June of each year, which has been named as the close of the financial year, in section 1-2 of this code, nor to include any bills incurred by reason of the action of the newly elected city government. (1942 Rev. Code, Ch. XXII, § 1)

Sec. 2-80. Maintain books; notify council of depletion of appropriations.

The auditor of accounts shall keep, in a neat methodical style and manner, a complete set of books under the direction of the committee on accounts, wherein shall be stated among other

¹ **Charter reference** – Bond required of auditor, § 31.

things the appropriation for each distinct object of expenditure, that whenever the appropriation for any specific object shall have been expended, he shall immediately communicate the same to the council in order that no further expenditure shall be made, except by an additional appropriation or by transfer of an unexpended balance from some other appropriation. (1942 Rev. Code, Ch. IV, § 4)

Sec. 2-81. Render assistance to committee on accounts, finance.

The auditor of accounts shall assist the committee on accounts in the settlement of the financial affairs of the city and render such other service as the committee on accounts or finance may from time to time require. (1942 Rev. Code, Ch. IV, § 8)

Sec. 2-82. Procedure for advancing money on contracts; auditor's responsibility.

In all cases where it is necessary to advance money on contracts for work begun but not completed, the mayor may, upon being satisfied of such necessity, draw upon the treasurer for the amount to be advanced, which draft shall in no case exceed eighty per cent (80 %) of the work done or material actually delivered under such contract at the time the draft is made. The draft shall be countersigned by the auditor of accounts and paid by the treasurer, and the auditor shall charge the amount to the proper person and account. (1942 Rev. Code, Ch. IV, § 3)

Sec. 2-83. Duty to examine, receive and record bills, accounts.

The auditor of accounts shall receive all bills and accounts from persons having demands against the city, examine them in detail, post, have them filed under appropriate heads and enter the same in his books against the specific appropriations for the several departments, and if he shall have any doubts as to the correctness of any bill, he shall not enter the same until approved by the committee on accounts. (1942 Rev. Code, Ch. IV, § 5)

Sec. 2-84. Submission of bills against city to committee on accounts; time of payment.

The auditor of accounts shall, on or before the twenty-fifth of each month, lay before the committee on accounts all bills against the city received by him for their examination and approval, and all bills so examined and approved shall be payable by the treasurer on and after the first day of the next month thereafter.

The specific day of each month on or before which the auditor shall lay his accounts before the committee on accounts may be changed at the discretion of the committee on accounts. (1942 Rev. Code, Ch. IV, § 10)

Sec. 2-85. Account to be opened charging treasurer with bonds, etc.

The auditor of accounts shall open an account with the treasurer charging him in detail with all bonds, notes, mortgages, leases, rents, interest and other sums receivable, and if the treasurer shall be collector of taxes, shall charge him with the whole amount of taxes placed in his hands for collection. If the collector be a separate officer, the amount to be collected shall be charged to him. (1942 Rev. Code, Ch. IV, § 7)

Sec. 2-86. Annual report; contents.

As soon after the third Monday in January as practicable, it shall be the duty of the auditor to prepare an annual financial report of the city.

The financial report shall:

- (a) Show distinctly and definitely as possible, the financial standing of the city.

- (b) Contain an estimate of the amount of money to be raised for the ensuing year, under the respective heads of appropriation as the council may direct.
- (c) Contain a statement of all receipts from each source of income, its revenue from taxes and all sources and an itemized statement of all expenditures, as required by statute under their various heads, and such financial statement as made by him shall have the approval of the committee on accounts.
- (d) Contain a schedule of all property owned by the city and an exhibit of the liability of the city.
- (e) As far as practicable conform to the accounts of the treasurer. (1942 Rev. Code, Ch. IV, § 6; Ch. XXII, § 1)

Secs. 2-87-2-93. *Reserved.*

DIVISION 4. CITY CLERK

Sec. 2-94. Duties generally.

The city clerk shall perform all duties prescribed by statute for the government of town clerks that do not conflict with the provisions of the Charter; he shall keep full records of all proceedings of the council and municipal officers, which records shall be subject to the inspection of the public at reasonable hours; give notice to the chairman of all committees appointed by authority; preserve all papers belonging to the city and arrange them in suitable files prepared for that purpose; preserve all city ordinances after final passage in a book kept for that purpose alone; and perform such other duties as the council may from time to time prescribe. (1942 Rev. Code, Ch. III, § 1)

Sec. 2-95. Purchasing authority; account of articles bought.

The city clerk shall each year, as soon as the council is organized, make an estimate of the blank books, stationary and blank forms required by the mayor, council and all other departments of the city government for the current municipal year, and with the auditor shall make a contract with some responsible party to furnish such material; he shall also purchase such other books, stationery and blank forms as the council may from time to time direct; he shall keep an account of all articles purchased by him, together with the amounts expended therefor, which, together with monies received by him for use of the city, shall be laid before the council. (1942 Rev. Code, Ch. III, § 2)

Secs. 2-96-2-99. *Reserved.*

DIVISION 5. CITY ELECTRICIAN

Sec. 2-100. Duties generally.

The city electrician shall have charge of the fire alarm system, and of the police alarm system, and of all fixtures and wires and electrical apparatus belonging to each and both of such systems; and, under the direction of the chief engineer of the fire department, shall make or cause to be made all necessary repairs, changes and additions to such systems so that they shall at all times be in good working order. (1942 Rev. Code, Ch. XXXIX, § 2)

Secs. 2-101-2-104. *Reserved.*

DIVISION 6. CITY ENGINEER

Sec. 2-105. Qualifications generally.

The city engineer shall possess knowledge and skills regarding engineering principles. (Ord. of 9-14-64)

Sec. 2-106. Removal.

Any appointee to the office of city engineer may be removed from office by the mayor, by a written order, for any cause which he shall in his official discretion deem sufficient, which cause he shall assign in his order of removal in accordance with the provisions of section 24 of the Charter. (Ord. of 9-14-64)

Sec. 2-107. Function of office.

The function of the office of city engineer shall be as follows:

- (a) *Make surveys.* To make surveys, including levels, prepare plans and profiles, write specifications and perform other related engineering work in connection with streets, sewers and other public structures.
- (b) *Construction of public structures.* To make quantity and cost estimates, inspect and approve the construction of public structures and perform other related engineering work for the city not specifically enumerated herein.
- (c) *Record new streets.* To record new streets as laid out in the City Street Book and establish lines and grades for building new streets and for regrading old streets.
- (d) *Erection of monuments.* To superintend the erection of monuments at the intersection of streets and preserve and reset all street monuments disturbed or liable to be disturbed in grading or building streets.
- (e) *Maintain records.* To maintain and safely keep records, instruments, plans, profiles, records of surveys and all other property and papers relating to engineering work of every description belonging to the city, and shall deliver the same to his successor in office.
- (f) *Provide services for other departments.* To perform engineering services for the public works department and for such other departments of the city as may from time to time require such service.
- (g) *Reports to mayor and council.* The city engineer shall make periodic reports to the mayor and council as to the business of his office.
- (h) *Perform other duties.* To perform such other duties as may be prescribed by the mayor or any applicable state or local laws or ordinances. (Ord. of 9-14-64)

Secs. 2-108-2-118. Reserved.

DIVISION 7. CITY PHYSICIAN

Sec. 2-119. Duties generally.

It shall be the duty of the city physician to attend in a professional capacity, all indigent persons when called upon to do so by the overseers of the poor, and the physician being once called shall attend such patient as long as the case may require. (1942 Rev. Code, Ch. XXXVIII, § 2)

Secs. 2-120-2-125. Reserved.

DIVISION 8. CITY SOLICITOR¹

Sec. 2-126. To be an attorney.

The city solicitor shall be an attorney-at-law. (1942 Rev. Code, Ch. VII, § 1)

Sec. 2-127. Duties generally.

- (a) It shall be the duty of the city solicitor to draft all deeds and other instruments which may be required of him by the mayor or council and which are to be drawn at the expense of the city.
- (b) He shall furnish his opinion on any legal subject relating to city affairs and render professional advice to officers of the city on any matter relating to their duties.
- (c) It shall be his duty to commence and prosecute all suits at law on behalf of the city and defend all suits at law brought against the city. (1942 Rev. Code, Ch. VII, § 2)

Secs. 2-128-2-135. Reserved.

DIVISION 9. CODE ENFORCEMENT OFFICER

Sec. 2-136. Appointment.

The code enforcement officer shall be appointed by the mayor, subject to the approval of a three-fourths (3/4) vote of all the members of the council by a roll call vote. (Ord. of 2-21-77)

Sec. 2-137. Duties.

The code enforcement officer shall perform all the duties and functions of the building inspector, housing inspector and license inspector as provided for by this Code and by state laws. (Ord. of 2-21-77; Ord. of 6-3-13)

Secs. 2-138-2-145. Reserved.

DIVISION 10. DIRECTOR OF PUBLIC WORKS

Sec. 2-146. Appointment.

The director of public works shall be appointed by the mayor, subject to the approval of a three-fourths (3/4) vote of all the members of the council by a roll-call vote.² (Ord. of 4-6-70)

Sec. 2-147. Duties generally.

The director of public works, acting under the instructions and supervision of the mayor, shall:

- (1) Plan, direct, supervise and manage all the functions of the city's public works department and its various divisions, including the sewer, sanitation and waste disposal divisions, and all its personnel shall be responsible to him in the performance of the respective duties of their employment as employees of the public works department.
- (2) Supervise the maintenance of all the vehicles, equipment and property of the public works department and its various divisions.
- (3) Supervise the maintenance of all the operating records of the department which shall be safely kept as the property of the city.

¹ **State law reference** – Municipal authority to appoint attorneys, 30-A M.R.S.A. § 2002.

² **Charter references** – Mayor's appointive powers, § 24; appointments generally, § 30.

- (4) Act as road commissioner and perform all his duties as required by state law and the city ordinances, upon being so appointed by the mayor.
- (5) Perform such other duties relative to the operation and supervision of the public works department, and its various divisions, as the mayor or the council may from time to time prescribe.
- (6) Prepare and present to the mayor at his request periodic reports of the activities of the department, and assist in the preparation of a proposed annual budget for the operation of the department. (Ord. of 4-6-70)

Sec. 2-148. Removal.

Any appointee to the office of director of public works may be removed from office by the mayor, by a written order, for any cause which he shall in his official discretion deem sufficient, which cause he shall assign in his order of removal in accordance with the provisions of section 24 of the Charter. (Ord. of 4-6-70)

Secs. 2-149-2-156. Reserved.

DIVISION 11. DIRECTOR OF FINANCE¹

Sec. 2-157. Appointment; terms; removal.

The director of finance shall be appointed by the mayor, with approval by a two-thirds (2/3) vote of all the members of the city council, for an initial term of one (1) year and thereafter for successive one-year terms by the mayor without council approval. He or she may be removed for good and sufficient cause on complaint of the mayor, sustained by a two-thirds (2/3) vote of all of the members of the city council.

Likewise, there may be appointed by the mayor, subject to the same conditions of approval and removal, a deputy or an acting director of finance. The deputy or acting director of finance may also serve as the deputy or acting treasurer and/or the deputy or acting tax collector, to be appointed by the mayor but without council approval. Whenever there shall be a vacancy in the position of director of finance, treasurer or tax collector, or whenever by reason of sickness or absence from the city or otherwise any such official shall be unavailable to perform his or her duties, the deputy or acting official is authorized to perform the duties of, and to act for, such official with the same force and effect as if such official had performed such duties or acts. (Ord. of 4-3-78; Ord. of 12-08-08)

Sec. 2-158. Qualifications generally.

The director of finance shall possess a thorough knowledge of the principals and practices of governmental accounting, budgeting and treasury management and by education and/or experience be capable of performing in a competent and businesslike manner all of the functions of this position. (Ord. of 4-3-78)

Sec. 2-159. Powers and duties.²

¹ **Charter references** – Appointment of city treasurer, tax collector, § 30; **State law references** – Powers and duties of town treasurers, 30-A M.R.S.A. §§ 5601-5603; powers and duties of tax collectors, 36 M.R.S.A. §§ 751-766.

² **State law references** – Powers and duties of town treasurers, 30 M.R.S.A. §§ 5001-5003; powers and duties of tax collectors, 36 M.R.S.A. §§ 751-766.

The director of finance shall have and possess all of the powers and duties conferred or imposed by state law and local ordinance upon treasurers and collectors of taxes including, but not by way of limitation, the following:

- (a) *Taxes, fees, allotments from other governments.* Collect all taxes, special assessments, license fees and other revenues of the city or for whose collection the city is responsible and receive all money receivable by the city from the state or federal government, or from any court, or from any office, department or agency of the city;
- (b) *Tax records.* The director of finance shall keep a set of books wherein a debit and credit account shall be kept with each and every taxpayer, the amount assessed against each by the assessors including the tax upon real estate, personal property, also sewer assessments and all unpaid taxes now held by former collectors against such taxpayer, and all other accounts which may properly be charged against such person or property by the city, also the interest due on such unpaid account, as the council may from time to time direct and such charges for notices for nonpayment or expenses for collection as the council may hereafter determine.

Each taxpayer shall also be credited with all payments made and all abatements allowed by proper authority, and the book containing such account shall be accessible to the taxpayers of the city during office hours.

A statement of an account established in accordance with the above, when approved by the auditor, shall form the basis of a claim against any taxpayer on which he may be sued or on which collection may be enforced by any legal means open for the collection of debts.

- (c) *Rents, deeds, leases; fines and penalties for same.* It shall be the duty of the director of finance to collect and receive all rents due the city, and under the direction of the mayor, to seal and execute all deeds and leases of city land and buildings.

He or she shall receive all fines and penalties accruing to the city and account for the same.

He or she shall proceed without delay to collect all accounts delivered to him or her for collection and in any case where he or she is unable to get a prompt settlement, he or she shall report the same to the council and shall then take such further action as they may prescribe.

- (d) *Appropriation records.* The director of finance shall keep, in a neat and methodical manner, a complete set of books, entering therein, among the other entries, the various appropriations made by the council, each under its appropriate head, and charge to each the expenditures and payments that from time to time are made therefrom.
- (e) *Settlement of accounts.* The director of finance shall pay all bills and settle all accounts against the city when properly presented to him or her by the auditor of accounts. No other person shall disburse any money on behalf of the city unless under his or her direction and control.
- (f) *Notes, bonds, etc.* The director of finance shall, under the direction of the committee on finance, prepare and issue all notes, bonds and other evidences of indebtedness that may from time to time be authorized by the council, and he or she is hereby authorized to

procure all books and forms that may be necessary to carry this division into effect and account for the same.

(g) *Custody of funds, investments, etc.* The director of finance shall have custody of all public funds belonging to or under the control of the city, or any office, department or agency of the city government, and deposit all funds coming into his or her hands in such depositories as may be designated by resolution of the council, or, if no such resolution be adopted, as may be designated by the mayor, subject to the requirements of law as to surety and the payment of interest on deposits. All such interest shall be the property of the city and shall be accounted for and credited to the proper account, and he or she shall have custody of all investments and invested funds of the city government, or in possession of such government in a fiduciary capacity, and have the safekeeping of all bonds and notes of the city and the receipt and delivery of city bonds and notes for transfer, registration or exchange;

(h) *Statements and reports.* Submit to the council through the accounts and claims committee a monthly statement of all receipts and disbursements in sufficient detail to show the exact financial condition of the city;

Prepare for the mayor, as of the end of each fiscal year, a complete financial statement and report. (Ord. of 4-3-78)

Sec. 2-160. Bond required.

The director of finance shall give bond with sufficient sureties to the satisfaction of the council for the faithful performance of the duties of his or her office and that he or she will truly account for and pay over all monies that may come into his or her hands, and all other papers, vouchers and other property belonging to the city. (Ord. of 4-3-78)

Secs. 2-161 - 2-185. Reserved.

ARTICLE IV. FINANCE

DIVISION 1. GENERALLY

Sec. 2-186. Committee on accounts to direct auditor's bookkeeping.

It shall be the duty of the committee on accounts to direct the manner in which the auditor shall keep the books, records and papers of his department. (1942 Rev. Code, Ch. XII, § 1)

Sec. 2-187. Committee to examine, pass on bills.

The committee on accounts shall meet monthly and carefully examine and pass upon all bills certified to them by the auditor, and shall approve all bills found to be correct and incurred by authority of the council. (1942 Rev. Code, Ch. XII, § 1)

Sec. 2-188. Committee to audit treasurer's, auditor's accounts.

At the close of each financial year, it shall be the duty of the committee on accounts to audit the accounts of the treasurer and auditor, and as often as they may deem for the interest of the city; and for this purpose, they shall have access to all books, bills, papers and records that may be in the possession of any subordinate city officer, and they shall in every case report the results of their examination to the mayor. (1942 Rev. Code, Ch. XII, § 2)

Sec. 2-189. Committee on finance to handle loans.

The committee on finance, under the direction of the council, shall negotiate all loans made on account of the city, and shall consider and report on all matters relating to the finances of the city. (1942 Rev. Code, Ch. XII, § 3)

Sec. 2-190. Repealed.

(1942 Rev. Code, Ch. XIII, § 2; Ord. of 6-17-74; Ord. of 11-6-89, § 1)

Sec. 2-191. Repealed.

(1942 Rev. Code, Ch. XIII, § 3; Ord. of 6-17-74; Ord. of 11-6-89, § 1))

Sec. 2-192. Repealed.

(1942 Rev. Code, Ch. XIII, § 4; Ord. of 11-6-89, § 1)

Sec. 2-193. Finance committee to ascertain city's debt, secure funds to pay.

It shall be the duty of the finance committee each year to ascertain how much money may be needed to pay the final bills of the city which have been incurred during the year, and to see that the treasurer is provided with funds by loans or collections for the payment of these bills, and also to recommend to the council appropriations sufficient to cover all bills incurred. (1942 Rev. Code, Ch. XXII, § 2)

Sec. 2-194. Departments to present bills to auditor.

All heads of departments charged with the expenditure of money on behalf of the city shall see that all bills incurred by them in their several departments are presented to the auditor on or before the twenty-fifth of the month in which such bills have been contracted, or on or before such day of the month as may be required by the auditor. (1942 Rev. Code, Ch. XIII, § 7)

Sec. 2-195. Procedure for payments from treasury.

No money shall be paid out of the treasury until the account has been examined by the auditor, approved by the committee on accounts and drawn for by the mayor. (1942 Rev. Code, Ch. XIII, § 9)

Sec. 2-196. Paying of city employees; receipts to be proper vouchers.

All persons in the employment of the city whose names are carried on a payroll shall be paid weekly or semi-monthly and their receipts on such payroll shall be proper vouchers for the auditor and committee on accounts. (1942 Rev. Code, Ch. XIII, § 8)

Sec. 2-197. Transfer of funds for other purposes department.

No unexpended balance in an appropriation made for any purpose or for any department, or for a particular purpose of one (1) department, can be transferred to any other purpose or to any other department or to any other purpose of the same department except by authority of the council, and the city clerk shall promptly notify the auditor and treasurer of any such transfer. (1942 Rev. Code, Ch. XIII, § 6)

Sec. 2-198. Additional appropriation for labor if exceeding estimates, costs.

When the proposal or estimate for the performance of any proposed labor exceeds the appropriation made therefor, or when the sum appropriated has been expended, the mayor shall report the same to the council, and no new work shall be undertaken and no further expenditure shall be made upon the work already commenced until an additional appropriation is made by the council for that purpose. (1942 Rev. Code, Ch. XIII, § 5)

Sec. 2-199. Committee on accounts to publish financial report; public to be notified.

The committee on accounts is hereby instructed to publish the financial report required by section 2-86 of this chapter in connection with the other reports of the city, which may be ordered printed by the council before the expiration of its term of service, also the report of the school committee and such other matter as they may deem of public interest to the city, and to order printed for public distribution so many copies as they may deem best, and the cost of such reports shall be paid by the incoming city government in the same manner as all other bills incurred for the legitimate expense of the city.

Public notice of the completion and publication of such report shall be made by the committee on accounts in such manner as they may deem best. The notice shall state when such reports may be obtained by the citizens in order that such reports may be obtainable by all parties interested. (1942 Rev. Code, Ch. XXII, § 1)

Sec. 2-200. Loans for a year or more; clerk's duty.

(a) When a loan is authorized by the council for a term of one (1) year or more, such loan shall be considered a part of the permanent debt of the city and the notes or bonds issued therefor shall be signed by the treasurer, the president of the council, who shall be ex officio, a member of the committee of finance and by the mayor of the city; and also by the city clerk in attestation of the vote of the council by which such loan is authorized, and it shall be the duty of the city clerk to see that no more notes or bonds are issued than were authorized by vote or order of the council. (1942 Rev. Code, Ch. XVIII, § 1)

Sec. 2-201. Loans for less than a year; clerk's duty.

When a loan is authorized for less than one year and is to be paid out of the money collected from the tax assessed during that year or from the collections of the tax of previous years, the same shall be considered a part of the temporary loan, and the notes issued therefor shall be signed only by the treasurer and attested by the city clerk, who shall, as in the former case, see that no more is borrowed than is authorized by the vote or order of the council. (1942 Rev. Code, Ch. XVIII, § 2)

Sec. 2-202. Orders for borrowing to have readings.

Orders for the borrowing of money for the use of the city, whether for a temporary or permanent loan, shall have two (2) separate readings with an interval of not less than three (3) days between such readings, in the same manner as now provided in the manner of appropriations, before being finally passed. (1942 Rev. Code, Ch. XVIII, § 3)

Sec. 2-203. Manual or facsimile signatures on securities.

Securities by the city for temporary or permanent loans shall be executed in the name of the city by the manual or facsimile signatures of the officials as required in section 2-200 or section 2-201, but at least one signature on each such bond or note shall be a manual signature. Coupons, if any, attached to such securities, shall be executed with the facsimile signature of the treasurer. (Ord. of 7-9-73)

DIVISION 2. PURCHASING PROCEDURE

Sec. 2-204. Competitive bidding required.

Except as otherwise provided herein, all purchases of supplies, contractual services, capital equipment and construction contracts shall be purchased by formal written contract based on competitive bids. (Ord. of 7-7-75; Ord. of 11-6-89, § 2)

Sec. 2-205. When competitive bidding is not required.

- (a) *Authority of the mayor.* The mayor may direct the solicitation of proposals under the open market procedure for purchases of less than five thousand dollars (\$5,000.00). (Ord. of 7-7-75; Ord. of 11-6-89, § 2)
- (b) *Waiver by the city council.* The city council may waive the formal bidding procedure and authorize the solicitation of proposals under the open market procedure for purchases of less than ten thousand dollars (\$10,000.00) and for purchases of goods on contractual services where the council determines that there are a small number of qualified bidders. (Ord. of 11-6-89, § 2)
- (c) *Bidding not required.*
 - (1) Bidding shall not be required for professional services contract which may be awarded based on requests for proposals, negotiated contracts and consideration of the profession's qualifications, experience and reputation of the contractor.
 - (2) Bidding shall not be required where the city council determined that the goods or services required are only available from a single source. (Ord. of 11-6-89, § 2)
- (d) *Renewal of service contracts.* The city council without seeking competitive bids may authorize the renewal of contractual services contracts where the city council determines that such renewal is in the public interest and any increase in cost for such services is less than ten thousand dollars (\$10,000.00) per contract year. (Ord. of 11-6-89, § 2)
- (e) *Payment of Substitute Vendors or Subcontractors of Existing City Vendors.* The following provisions shall govern in all instances in which the city has an existing contract with an outside vendor or service provider, who for some reason is unable or unwilling to perform some or all of the work under its existing contract.
 - 1. Provided the contract does not prohibit subcontracting, and the pricing and other economic terms are the same, or less expensive, for a substitute vendor or subcontractor, then no additional approvals are required solely on the provider's basis as a substitute vendor or subcontractor. The Mayor, or his designee, will so inform the city council in writing as soon as he becomes aware of such an arrangement.
 - 2. Alternatively, if the pricing or other economic terms are more expensive, then prior city council approval shall be required where the cost of such an arrangement is reasonably likely to exceed three thousand dollars (\$3,000.00); and
 - 3. Where there is an emergency that requires immediate purchase of supplies, contractual services, or capital equipment, the requirements of section 2-208, Emergency purchases, shall be followed. (Ord. of 5-19-08)

Sec. 2-206. Formal bidding procedure.

Formal competitive bidding shall conform to the following:

- (1) *Notice inviting bids.* Notice inviting bids shall be published once in a greater Portland newspaper and at least five (5) days preceding the last day set for the receipt of bids. (Ord. of 11-6-89, § 2)

- (2) *Bid depositions.* When deemed necessary by the purchasing agent, bid deposits shall be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to return of surety where the purchasing agent has required such. A successful bidder shall forfeit any surety required by the purchasing agent upon failure on his part to enter into a contract within ten (10) days after the award. (Ord. of 11-6-89, § 2)
- (3) *Bid opening procedure.*
- (a) *Sealed.* Bids shall be submitted sealed to the purchasing agent and shall be identified as bids on the envelope.
 - (b) *Opening.* Bids shall be opened in public at the time and place stated in the public notices by the purchasing agent or his designated representative.
 - (c) *Tabulation.* A tabulation of all bids received shall be available for public inspection.
 - (d) *Integrity of opening procedure.* A member of the council, the city clerk, or the mayor and the applicable department head (or the city treasurer), shall be present at the bid opening to insure and attest to the integrity of the bid opening procedure. (Ord. of 11-6-89, § 2)
- (4) *Rejection of bids.* The mayor shall have the authority to reject any or all bids, or parts of bids, when the public interest would be served thereby, if the lowest bid or part of a bid is under one thousand dollars (\$1,000.00). When the lowest bid or part of a bid to be rejected exceeds one thousand dollars (\$1,000.00), the city council shall have the authority of rejection. (Ord. of 11-6-89, § 2)
- (5) *Award of contracts.*
- (a) *Authority of the mayor.* The mayor shall have the authority to award contracts under five thousand dollars (\$5,000.00) and when the amount totals or exceeds five thousand dollars (\$5,000.00), only with prior city council authorization of said contract.
 - (b) *Lowest responsible bidder.* Contracts shall be awarded to the lowest responsible bidder. In determining “lowest responsible bidder”, in addition to price, the mayor (when the amount is under five thousand dollars (\$5,000.00)), or the council (when the amount totals or exceeds five thousand dollars (\$5,000.00)), shall consider:
 - 1. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
 - 2. Whether the bidder can perform the contract to provide the service promptly, or within the time specified, without delay or interference;
 - 3. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
 - 4. The quality of performance of previous contracts or services;
 - 5. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
 - 6. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;

7. The quality, availability and adaptability of the supplies, or contractual services to the particular use required;
8. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
9. The number and scope of conditions attached to the bid.

(c) *Similar or tie bids.*

1. *Local vendor preference.* Notwithstanding the provisions of Subsection (5)(b), it is the policy of the city, when making purchases or entering contracts, to give some preference to local vendors and service providers, if the price differential between the local and other suppliers is small. This policy encourages a strong and diverse economy within the city; and it further supports local businesses and individuals, which not only pay taxes, but also spend their incomes locally, and support other community institutions. If the bid received from a Westbrook business establishment is in the same amount as, or is within two percent (2 %) of a low bid submitted by a business located outside the city, then the purchase/contract may be awarded to the Westbrook business, quality and service being equal.
2. *Drawing of lots.* Where subsection (5)(c)(2) is not applicable, or where two (2) local vendors have tied for lowest bid, the purchasing agent shall resolve the impasse by drawing lots in public.

(d) *Statement of reasons.* When the award is not given to the lowest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the Mayor or the Council and filed with the other papers relating to the transaction.

(e) *Performance bonds.* The purchasing agent shall have the authority to require a performance bond, before entering a contract, in such amount as he shall find reasonably necessary to protect the best interest of the city. (Ord. of 11-6-89, § 2)

(6) *Prohibition against subdivision.* No contract or purchase shall be subdivided to avoid the requirements of this section.

(7) *Right to reject bids, negotiate terms.* Notwithstanding any other provision of this ordinance, or any term, or lack thereof, in any bid document or request for proposal, the city of Westbrook expressly reserves the right to reject any and all bids and proposals; to award a bid or contract to other than the lowest bidder; to readvertise for new bids; and to negotiate for more advantageous terms with any vendor or service provider, as deemed in the best interest of the city. (Ord. of 7/7/75; Ord. of 11-6-89, § 2; Ord. of 5-4-98)

Sec. 2-207. Open market procedure.

Purchases of supplies, contractual services, capital equipment and construction contracts authorized by this chapter to be purchases through the open market procedure shall be purchased in conformance with the following procedure:

- (1) *Minimum number of bids.* All open market purchases shall, wherever possible, be based on at least three (3) proposals, and shall be awarded to the lowest responsible bidder in accordance with the standards set forth in subsection (5)(b) of section 2-206 above.

- (2) *Notice inviting bids.* The purchasing agent shall solicit bids by direct mail request to prospective vendors, or by telephone. Every reasonable effort will be made to solicit bids from Westbrook business establishments.
- (3) *Award.* The mayor shall have the authority to award all open market purchases under one thousand dollars (\$1,000.00).
- (4) *Recording.* The purchasing agent shall keep a record of all open market orders and bids submitted in competition thereon, and such records shall be available for public inspection. (Ord. of 7-7-75; Ord. of 11-6-89, § 2; Ord. of 12-16-91)

Sec. 2-208. Emergency purchases.

(a) *By purchasing agent.* In case of an apparent emergency which requires immediate purchase of supplies, contractual service or capital equipment, the mayor shall be empowered to authorize the purchasing agent to secure by open market procedure as herein set forth, at the lowest obtainable price, any supplies, contractual services, or capital equipment regardless of the amount of the expenditure.

- (1) Recorded explanation. A full report of the circumstances of an emergency purchase shall be filed by the purchasing agent with the city council and shall be open to public inspection.
- (2) Council confirmation. The city council shall confirm the expenditure after the fact if such expenditure would normally have required prior council approval.

(b) *By head of departments.* In case of actual emergency, and with the approval of the mayor, the head of any department may purchase directly any supplies or contractual services whose immediate procurement is essential to prevent delays in the work of the department which may vitally affect the life, health or convenience of citizens.

- (1) Recorded explanation. The head of such department shall send to the purchasing agent a full written report of the circumstances of the emergency. The report shall be filed with the council as provided in subsections (a)(1) and (2) above. (Ord. of 7-7-75; Ord. of 11-6-89, § 2)

Sec. 2-209. Inspection and testing.

(a) The purchasing agent shall inspect, or supervise the inspection of, all deliveries of supplies, contractual services, and capital equipment to determine their conformance with the specifications set forth in the order or contract.

- (1) *Inspection by department.* The purchasing agent shall have the authority to authorize having the staff and facilities for adequate inspection to inspect all deliveries made to such using agencies under the rules and regulations which the purchasing agent may prescribe.
- (2) *Tests.* The purchasing agent shall have the authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine their quality and conformance with the specifications. In the performance of such tests, the purchasing agent shall have the authority to make use of laboratory facilities of any agency of the city government or of any outside laboratory.

(b) The purchasing agent may require that any contract awarded for any public improvement provided for the withholding of up to ten percent (10%) of the money due the contractor until the

project under contract has been accepted by the city. When such retainage has been withheld by the city, it shall not be withdrawn until the purchasing agent has reported the results of any final inspection and testing to the city council, which shall have sole authority to release such sums. (Ord. of 7-7-75; Ord. of 11-6-89, § 2; Ord. of 2-2-93)

Sec. 2-210. Cooperative purchasing.

The purchasing agent shall have the authority to join with the other units of government in cooperative purchasing when the best interests of the city would be served thereby, subject to the intent and standards as set forth in sections 2-204 through 2-207. (Ord. of 7-7-75; Ord. of 11-6-89, § 2)

Secs. 2-211 - 2-213. Reserved

ARTICLE V. POLICE, FIRE/RESCUE & COMMUNICATIONS PERSONNEL

Sec. 2-214. Employees to comply with article.

It shall be the duty of all persons in the public safety service(s) of the city to comply with rules contained in this article and aid in their enforcement. (Ord. of 12-6-82; Ord. of 9-9-96)

Sec. 2-215. Public safety commission established.

A public safety commission of the city is hereby established. (Ord. of 12-6-82)

Sec. 2-216. Membership, appointment, compensation of commission.

(a) The public safety commission shall consist of one member from each ward, not to exceed five (5) members who shall be qualified voters from the city. In addition, the mayor may appoint one member, to serve as an alternate, who shall also be a qualified voter of the city, and who may attend and participate in all commission proceedings, except that he or she may only vote when one or more regular members are absent.

(b) The mayor shall appoint the original members of the commission using the following procedure; for the first terms, he shall appoint one to serve one (1) year, one to serve two (2) years, one to serve three (3) years, one to serve four (4) years and one to serve five (5) years. Thereafter all appointments shall be for a complete term of five (5) years, and the terms of office shall expire on the first day of January.

(c) The members of the commission shall be compensated as approved by the city council. (Ord. of 12-6-82; Ord. of 9-9-96; Ord. of 11-3-08)

Sec. 2-217. Vacancies in public safety commission.

(a) Upon the removal from the city of any member of the public safety commission, his appointment to the commission shall cease and there shall be created a vacancy.

(b) All vacancies shall be filled for the unexpired term by the mayor within 60 days. (Ord. of 12-6-82; Ord. of 9-9-96)

Sec. 2-218. Commissioners to take oath.

Before entering upon their duties, commissioners of the public safety commission shall take the oath of office before the city clerk or other duly qualified official. (Ord. of 12-6-82)

Sec. 2-219. Commission to choose officers term.

The public safety commission shall elect by majority vote one (1) of its members to serve as chair, vice chair, secretary, who shall hold office for a period of one (1) year. (Ord. of 12-6-82; 9-9-96)

Sec. 2-220. Public safety commission to administer this article and adopt rules hereunder.

(a) The public safety commission shall administer the provisions of this Article and shall draft and adopt rules, as authorized under this Article, for the hiring and the promotion procedures for members of the police, fire/rescue and communications departments of the city.

(b) Prior to the adoption or modification of rules under this section, the commission shall give notice of proposed changes or modifications to the mayor, the city administrator, the city clerk, the city council, the public safety department heads and to the heads of the local police, fire/rescue and communications unions.

(c) Prior to adoption or modification of rules under this section, the commission shall conduct a public hearing on the proposed adoption or modification of rules. The commission shall accept written comments on the rules for a period of five (5) business days from the date of the conclusion of the hearing.

(d) Rules adopted or modified under this section, as provided above, shall be published through the office of the city clerk and shall become effective upon passage by a majority vote of commission members at a public hearing. (Ord. of 12-6-82; Ord. of 9-9-96; Ord. of 11-3-08)

Sec. 2-221. *Repealed.* (Ord. of 12-6-82; Ord. of 9-9-96; Ord. of 11-03-08)

Sec. 2-222. Commission to keep lists of candidates deemed eligible for hire.

(a) Candidates shall become eligible for employment through the process defined by commission rules governing each of the public safety departments.

(b) Eligibility lists for initial employment shall remain in force not longer than one (1) year for the police, fire/rescue and communications departments. The commission shall submit to the mayor and the affected department head three (3) names for one vacancy, four (4) names for two (2) vacancies, five (5) names for three (3) vacancies, six (6) names for four (4) vacancies, and seven (7) names for five (5) vacancies. The department head shall recommend to the mayor the best qualified candidate(s) for hire from the names submitted. In the event there are not enough qualified candidates to meet the above requirements, the commission may waive such numerical requirement to facilitate filling any vacancies.

(c) Each eligibility list for initial hires shall be deemed confidential personnel records except as otherwise required by law. (Ord. of 12-6-82; Ord. of 9-9-96; Ord. of 11-03-08)

Sec. 2-223. Commission to review personnel qualified for promotion, report findings.

(a) The public safety commission shall implement the promotional process for each public safety department in accordance with the rules adopted under this Article and report its findings to the mayor.

(b) The commission shall submit to the mayor and the affected department head three (3) names for one promotional vacancy, four (4) names for two (2) vacancies, five (5) names for three (3) vacancies, six (6) names for four (4) vacancies, and seven (7) names for five (5) vacancies. The department head shall recommend to the mayor the best qualified candidate(s) for promotion from the names submitted. In the event there are not enough qualified candidates

to meet the above requirements, the commission may waive such numerical requirement to facilitate filling the vacancy. (Ord. of 12-6-82; Ord. of 9-9-96; Ord. of 11-03-08)

Sec. 2-224. Public safety commission to maintain records.

The public safety commission shall keep records of its proceedings. (Ord. of 12-6-82; Ord. of 9-9-96; Ord. of 11-03-08)

Sec. 2-225. Regular and special meetings of public safety commission; quorum; action on matters on short notice.

(a) The public safety commission may either establish by vote a time and place for regular monthly meetings or may meet in special meetings as frequently as necessitated by commission business. Special meetings will be called either by the chair individually or by the chair upon a request from a majority of the members of the commission.

(b) Three (3) members shall constitute a quorum. All votes shall be determined by a majority vote of the members present and voting so long as a quorum is present.

(c) Except as otherwise provided by law or in the case of a public safety emergency, any matters that may properly come before the commission may be acted upon provided at least 24 hours' advance public notice has been given. (Ord. of 12-6-82; Ord. of 9-9-96; Ord. of 11-03-08)

Sec. 2-226. City to pay operational expenses of commission.

All expenses incident to the operation of the public safety commission shall be paid by the city after prior approval by the council and be chargeable to the department for which the expenses may have been incurred. (Ord. of 12-6-82; Ord. of 9-9-96)

Sec. 2-227. City Solicitor to act as commission's attorney upon request.

The city solicitor shall act as attorney for the public safety commission if requested to do so by the commission. (Ord. of 12-6-82; Ord. of 9-9-96; Ord. of 11-03-08)

Sec. 2-228. Requirements of applicant.

(a) Police Officers: Requirements for applicants for the police department shall be established by commission rule and shall be available for public inspection in the city clerk's office and on the city's internet website.

(b) Firefighters and Firefighter/Paramedics: Requirements for applicants for the fire department, including firefighter paramedics, shall be established by commission rule and shall be available for public inspection in the city clerk's office and on the city's internet website.

(c) Public Safety Dispatcher: Requirements for applicants for communications dispatcher shall be established by commission rule and shall be available for public inspection in the city clerk's office and on the city's internet website.

(Ord. of 12-6-82; Ord. of 9-9-96; Ord. of 11-03-08)

Sec. 2-229. Good character of applicants.

The commission shall establish by rule procedures for each public safety department to investigate the background of all applicants to determine their good character and suitability for positions of public trust. (Ord. of 12-6-82; Ord. of 9-9-96; Ord. of 11-03-08)

Sec. 2-230. Repealed. (Ord. of 12-6-82; Ord. of 9-9-96; Ord. of 11-03-08)

Sec. 2-231 - 2-233. *Repealed.*

(Ord. of 12-6-82; Ord. of 9-9-96)

Secs. 2-234-2-264. *Reserved.*

ARTICLE VI. PLANNING BOARD

Sec. 2-265. Created; composition; qualification of members.

Pursuant to Title 30, Section 1917, of the Maine Revised Statutes, there is hereby created a planning board, which shall consist of seven (7) members who must be residents and registered voters of the City of Westbrook.

Sec. 2-266. Appointment and tenure of members; municipal officers ineligible.

The seven (7) members of the planning board shall be appointed by the mayor, subject to the approval of the city council, one (1) from each of the city's five (5) wards, and two (2) from the city at large. The initial members from the city's five (5) wards shall be appointed for terms of one (1), two (2), three (3), four (4) and five (5) years, and the initial members from the city at large shall be appointed for terms of three (3) and five (5) years. Thereafter, all subsequent appointments, except to fill vacancies, shall be for a term of five (5) years and until a successor is appointed. Additionally, the mayor shall appoint two alternate members to the planning board, with terms of five (5) years. A municipal officer shall not be a member of the board. (Ord. of 12-3-73; Ord. of 11-1-04)

Sec. 2-267. Compensation.

The city council shall establish a rate of compensation for the chairman and the members of the planning board under the city salary ordinance based on attendance at meetings. No member shall receive compensation unless the approved minutes of that meeting shall indicate his presence. (Ord. of 12-3-73)

Sec. 2-268. Vacancy.

A vacancy shall occur upon the resignation or death of any member of the planning board, or when a member ceases to be a resident of his respective ward for ward members, or a resident of the city for members at large, or when a member fails to attend four (4) consecutive regular and special meetings, or who fails to attend at least seventy-five per cent (75%) of all meetings during the preceding twelve (12) months period. When a vacancy occurs, the chairman of the board shall immediately so advise the mayor and council in writing. The board may recommend to the mayor and council that the attendance provision be waived for cause, in which case no vacancy will then exist until the council disapproves the recommendation. (Ord. of 12-3-73)

Sec. 2-269. Removal.

Any member of the planning board may be removed for good and sufficient cause, on complaint of the mayor sustained by a two-thirds (2/3) vote of the city council. (Ord. of 12-3-73)

Sec. 2-270. Election of officers.

Upon the appointment of the members to the planning board, they shall meet and elect a chairman and a vice-chairman and such other officers as they may deem advisable to serve for a period of one (1) year and until a successor is elected, and they may succeed themselves in office if so elected. (Ord. of 12-3-73)

Sec. 2-271. Meetings; records; quorum.

The planning board shall hold regular meetings and shall designate the time and place thereof, and shall keep a record of all its proceedings. Special meetings may be held upon the call of the chairman or in his absence the vice-chairman, and at such other times as the board may determine, provided at least twenty-four (24) hours notice of the meeting be given to each member. All records shall be deemed public after acceptance by the board and may be inspected at reasonable times. Four (4) members of the board shall constitute a quorum. (Ord. of 12-3-73)

Sec. 2-272. Conflict of interest.

No member of the planning board shall vote on any matter in which he has a conflict of interest. All questions of a conflict of interest as to any member must be raised prior to voting. Any question of whether a member shall be disqualified from voting on a particular matter shall be decided by a majority vote of the board, however, at least three (3) affirmative votes shall be required. The member being challenged shall have no vote. (Ord. of 12-3-73)

Sec. 2-273. Rules and regulations; schedule of filing fees.

The planning board shall adopt rules and regulations for the transaction of its business, and may establish a schedule of filing fees relative to matters presented to the board by the public to cover the administrative costs of public hearings, all of which shall be subject to council approval. (Ord. of 12-3-73)

Sec. 2-274. General powers and duties.

The planning board shall:

- (a) Prepare a comprehensive plan for the development of the community. In the preparation of a comprehensive plan, the public shall be encouraged to participate. The plan must be given a public hearing prior to its being adopted by the planning board.
- (b) Exercise such powers and perform such duties and functions as are authorized and provided for under the city's Code and the laws of the state pertaining to zoning, subdivisions, and land development throughout the community.
- (c) Subject to the approval of the city council, make and enter into such contracts as it may deem advisable to carry out the objectives and purposes of the board, and shall have such other powers and perform such other duties as may be necessary for the administration of its affairs on behalf of the city, and may obtain goods and services necessary for its proper function as approved by the city council within the limits of its budget or as otherwise supplemented by the city council. (Ord. of 12-3-73)

Sec. 2-275. Voting generally.

(a) In matters of a general nature on which a vote is taken by the planning board, a majority of those present, and constituting a quorum, shall be sufficient. However, in any and all matters pertaining to changes in the comprehensive plan, or the official map, or approval of definitive plans or conditional uses, or recommendations on the disposition of city property, or any recommendations on capital improvement programs or any action involving appropriations and expenditures of any monies or recommendations to the board of appeals, an affirmative vote of a majority of all the members of the board (four (4) votes) shall be necessary for its passage.

(b) Any and all matters pertaining to changes in zoning or proposed amendments to the zoning or subdivision ordinances, an affirmative vote of a majority of all the members of the board (four (4) votes) shall be necessary for its passage. (Ord. of 12-3-73; Ord. of 9-22-86, § 1)

Sec. 2-276. Interrelation of city council and board.

The planning board shall be an advisory body to the city council, and the existing city zoning and subdivision ordinances shall not be revised or amended until the board has made a careful investigation of all proposed revisions or amendments in conjunction with the city's comprehensive plan. When the council directs the planning board in writing to study and report back on proposed revisions or amendments to ordinances, the board shall make its official report to the city council within sixty (60) days unless a longer period of time has been granted by the council. The failure of the board to issue its report within the allotted time span shall be deemed to be a negative report. Any proposed revisions or amendments to the zoning or subdivision ordinances which have been approved or disapproved by the board may be enacted only by a majority (four (4) votes) of all the members of the council.

The chairman of the planning board will schedule any required public hearings. (Ord. of 12-3-73; Ord. of 10-28-96)

Sec. 2-277. Savings provisions.

The present planning board shall continue in existence and continue its functions until a new planning board is organized, and the city's present comprehensive plan shall continue in full force and effect until a new comprehensive plan is adopted, as herein provided for. (Ord. of 12-3-73)

Secs. 2-278-2-284. Reserved.

ARTICLE VII. ASSESSOR AND BOARD OF ASSESSMENT REVIEW

Sec. 2-285. Office of single assessor established.

There is hereby established a single assessor for the City of Westbrook who shall replace the board of assessors and whose powers and duties shall be the same as for the assessor for towns under state law. He or she shall be appointed by the mayor, with city council approval, for an initial term of one year and thereafter for successive one-year terms by the mayor without council approval. He or she may be removed for good and sufficient cause on complaint of the mayor, sustained by a two-thirds (2/3) vote of all of the members of the city council. (Ord. of 2-6-78)

Sec. 2-286. Board of assessment review established.

There is hereby established a board of assessment review for the City of Westbrook whose powers and duties shall be established by state law. The board shall consist of seven (7) members, one (1) from each of the five (5) voting wards, and two (2) at-large, appointed by the city council and the initial appointments shall be as follows: two (2) for a term of one (1) year, two (2) for a term of two (2) years, one (1) for a term of three (3) years, one (1) for a term of four (4) years and one (1) for a term of five (5) years. Thereafter, all subsequent appointments shall be for a term of five (5) years, except the filling of vacancies which shall be for the remainder of the unexpired term. (Ord. of 2-6-78)

ARTICLE VIII. MUNICIPAL FISCAL YEAR¹

Sec. 2-287. Established.

Commencing on July 1, 1982 the municipal fiscal year shall be from July first through June thirtieth for each year. (Ord. of 1-26-81, § 2)

Sec. 2-288. Repealed.

(Ord. of 1-26-81, § 2; Ord. of 9-9-91)

Secs. 2-289 – 2-299. Reserved.

ARTICLE IX. ETHICS AND CONFLICTS OF INTEREST

Sec. 2-300. Statement of policy.

(a) This ordinance recognizes that the proper operation of democratic government requires that public officials be independent, impartial and responsible to the citizens; that public office not be used for personal gain; and that the public have confidence in the integrity of its municipal government. The purpose and intent of this Article is to promote the objective of protecting the integrity of the government of the City of Westbrook against actual or reasonably perceived conflicts of interest, without creating unnecessary barriers to public service.

(b) This ordinance also recognizes, with respect to municipal employment, that problems may arise when an employee works in proximity to his or her relative or a person to whom he or she is closely attached; or when the employee's relative is an elected official, because when such familial bonds exist, there inevitably is the reality or the appearance of improper influence or favor.

(c) This Article shall not prevent the Mayor, the City Council, and municipal boards and commissions from adopting additional procedures and employment standards intended to prevent the exercise or appearance of improper influence or bias in the conduct of government business. (Ord. of 8-4-97)

Sec. 2-301. Definitions.

As used in this article, the following terms shall have the following meanings:

(a) *Financial involvement.* The term “financial involvement” means any existing, or current efforts toward achieving ownership or investment interest, contract right, significant customer relationship, or employment relationship, or with a public official or a person with whom the public official has a personal relationship.

(b) *Municipal board.* The term “municipal board” means the Westbrook City Council, Planning Board, Zoning Board of Appeals, Public Safety Commission, and Board of Assessment Review.

(c) *Participating in a matter.* The term “participation in a matter” means action by a public official to vote, decide, deliberate, influence or direct others in regard to matters currently before or anticipated as coming before, a municipal board or which involve the operation of municipal government, including personnel administration.

(d) *Personal relationship.* The term “personal relationship” means any family, affectional, or social relationship that is characterized by one or more of the following:

¹ **State law reference** – Authority of municipal officers re establishment of fiscal year, 30-A M.R.S.A. § 5651.

- (1) Persons who are husband and wife, or parent and child;
- (2) Persons who share a physical intimacy with each other;
- (3) Persons who acknowledge an ongoing romantic relationship with each other;
- (4) Persons who live together in the same residence;
- (5) Persons who intermingle their financial assets without an accounting of separate ownership interests.

(e) *Public official.* The term “public official” means (1) any person holding an elected municipal office, (2) any person holding an appointed position on a municipal board, (3) the city administrator, and (4) the department heads and administrators of municipal departments. (Ord. of 8-4-97; Ord. of 2-9-04)

Sec. 2-302. Conflicts of Interest.

(a) *Standard of conflict.* A public official shall refrain from participation in a matter when there exists an actual, potential or reasonably perceived conflict of interest arising from a personal relationship or a financial involvement that would cause a reasonable person to believe that the public official cannot act in his or her official capacity without self-interest or bias.

(b) *Referral.* When there is a question as to the existence of a conflict of interest under the standard set forth in the preceding paragraph, the matter may be referred to the municipal board for its adversary opinion as follows:

- (1) The mayor or a city councilor may refer to the unaffected members of the council the question of whether he or she has an actual, potential, or reasonably perceived conflict of interest. Similarly, any public official serving on another board, committee, or commission may refer such a question to the other members of that body; or
- (2) Two or more members of the city council, municipal committee or commission may refer to the applicable board the question of whether another member of that body, or of a public official who serves under the authority of that body, has an actual, potential or reasonably perceived conflict of interest.

(c) *Ethics determination.* The municipal board shall determine whether the public official should refrain from participation in a matter because of actual, potential, or reasonably perceived existence of a conflict of interest, arising from a personal relationship or a financial involvement that would cause a reasonable person to believe that the public official cannot act in his or her official capacity without self-interest or bias. The opinion rendered shall be advisory only; and such decision by any municipal board, or the lack of action thereon, shall not absolve a public official from the requirements elsewhere set forth by law.

(Ord. of 8-4-97)

Sec. 2-303. Incompatible employment positions.

(a) *Standard of Conduct*

(1) *Public Officials.*

- a. A public official who is a municipal employee shall not hold a supervisory position, or be senior in the chain-of-command, to an individual with whom he or she has a personal relationship or a financial involvement unless:

1. The relationship is disclosed by the public official to the mayor; and
 2. The mayor approves a management plan that is designed to prevent favoritism or any other improper influence in connection with the employment relationship and that provides ongoing oversight by a person or persons not subordinate to either of the individuals who have the personal relationship or financial involvement; and
 3. The mayor reports to the city council the existence of the potential incompatibility of employment positions and the establishment of a management plan to address the same.
- b. Neither shall the mayor hold a supervisory position, or be senior in the chain-of-command, to an individual with whom he or she has a personal relationship or financial involvement, unless:
1. The relationship was disclosed to the city council by the mayor; and
 2. The legislative body approves a management plan that is designed to prevent favoritism, or any other improper influence with the employment relationship, and that provides ongoing oversight by a person or persons not subordinate to the mayor.
- c. Neither shall a city councilor hold a supervisory position, or be senior in the chain-of-command, to an individual with whom he or she has a personal relationship or financial involvement, unless:
1. The relationship is disclosed to the mayor and the city council; and
 2. The non-affected members of the council approve a management plan that is designed to prevent favoritism or any other influence in connection with the employment relationship and that provides ongoing oversight by a person or persons not subordinate to the city councilor.
- (2) *Existing Permanent Employees.* The employment status of existing full-time municipal employees, as of the date of adoption of this ordinance, shall not be affected thereby, notwithstanding that a relative is an elected official or employee. However, an appropriate management plan may be required where necessary.
- (3) *Newly hired employees.*
- a. After the date of adoption of this ordinance, no new candidate for permanent employment shall be hired if there would be created such a conflict; i.e., a relative is already employed or serves as an elected official.
 - b. In the event that a relative is elected to municipal office (mayor, city council) after this ordinance is adopted, those department heads and administrative employees that were hired after the initial date of this ordinance will be asked to resign.
 - c. In the event that a relative of a bargaining unit member, who was hired after the date of this ordinance, is later elected to office, that employee's job classification will become fixed; i.e. no promotion or reclassification to a higher position, during the relative's term(s) of office, to the extent consistent with law.

(b) *Management plan guidelines.* When such employment conflicts exist, the city will follow these guidelines in preparing management plans:

- (1) Any direct supervisor-subordinate relationship between relatives shall be avoided.
- (2) Similarly, any indirect supervisor-subordinate relationship also should be prevented, except with the express approval of the mayor. In the event that the mayor is the source of the potential conflict, then such relationship is prohibited except with the express approval of the city council.
- (3) Any job assignment affecting relatives, which may jeopardize the city's or other employees' security is prohibited.
- (4) Any other working relationship between relatives which appears to present a potential or actual morale problem for them or for co-workers must be approved by the mayor, or if that office is the source of the morale problem, the working relationship must be approved by the city council.
- (5) To the fullest extent possible, when any of these situations occur, the employee(s) involved will be asked to resolve the conflict by a certain date.
- (6) If the employee is unable to reach a resolution by that time, the options available to the city include:
 - a. Transfer of one or more employees;
 - b. Restructuring a position or a city department; or
 - c. Request for resignation of an employee, or, if applicable, of a city councilor or mayor.

(Ord. of 8-4-97)

Sec. 2-304 – 2-309. Reserved.

ARTICLE X. LEGAL COUNSEL AND INDEMNIFICATION

Sec. 2-310. Legal counsel and indemnification.

The City council shall in all cases provide competent legal counsel to defend the city, any of its boards and commissions, the mayor, any city councilor, officer, employee or the member of any city board or commission who is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that said person is or was the mayor, a city councilor, officer, employee or board member of the city, and shall pay or indemnify such mayor, councilor, officer, employee or board member as against all expenses, fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding, subject to the following:

(a) Exceptions. Nothing herein shall be construed to require the city to provide or pay for legal counsel or provide indemnification for the mayor, any city councilor, officer, employee or board member in the following situations:

- (1) In civil matters, where the mayor, councilor, officer, employee or board member is the plaintiff or moving party; or where it shall be finally adjudicated in any

action, suit or proceeding that said mayor, councilor, officer, employee or board member shall not have acted in good faith and in the reasonable belief that his or her action was in the best interest of the city; or

(2) In criminal matters, where the mayor, councilor, officer, employee or board member is the complaining party, or had reasonable cause to believe that such conduct was unlawful. Termination of any action, suit or proceeding by judgment, order or conviction adverse to such person, or by settlement, or by plea of nolo contendere or its equivalent, shall not of itself create a presumption that such person did not act in good faith and in the reasonable belief that his action was in the best interests of the city nor, with respect to any criminal action or proceeding, that such person had reasonable cause to believe that his or her conduct was unlawful.

(b) Other legal counsel. Nothing herein shall be construed to prohibit any such person from seeking additional legal counsel at his or her own expense. However, nothing herein shall be construed to require the city to pay any fees or other expenses incurred as a result of employment of such additional legal counsel.

(c) Other rights. The rights provided for in this Article X shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any other statute, ordinance, agreement or policy of the city.

(d) City Solicitor. In circumstances involving litigation or other legal proceedings between two or more legal bodies or individuals qualifying for the privileges granted herein, the City Solicitor may, but shall not be required to, represent or otherwise participate on behalf of either party, subject to the requirements of the Maine Bar Rules and the Code of Professional Responsibility.

(Ord. of 7-6-09)

ART. XI CONSTABLES

Sec. 2-311. Appointment of constables; duties.

In accordance with the provisions of Sections 2-51 and 2-52 of this Chapter and 30-A M.R.S.A. Section 2673, the Mayor may appoint, for not more than one year, and fix the compensation of so many constables of the City as the Mayor determines to be necessary or required to serve the needs of the public safety or welfare of the City. Any constable appointed under this Ordinance shall not perform any of the functions of a police officer and shall not have any power or authority of arrest.

Sec. 2-312. Requirements for appointment.

Constables shall be of good moral character and no constable shall be appointed who has been convicted of a Class A, B, C or D crime in the State of Maine or any similar crime in any other state.

Section 2-313. Application.

1. All applicants for the position of constable shall submit to the City Administrator in such form as may be prepared and approved by the City Administrator all pertinent information relative to the applicant's qualifications for the position of Constable.

2. All applicants shall be fingerprinted by the Police Department, and the Chief of Public Safety shall submit the fingerprints of each applicant to the appropriate State and Federal agencies for classification and criminal records check.

3. The Chief of Public Safety shall conduct, or cause to be conducted, such investigation regarding the applicant's qualification as he may deem appropriate.

4. All information relating to each applicant shall be presented to the Mayor, together with a recommendation of the Chief of Public Safety and the City Administrator, and the Mayor shall forward recommendations concerning appointments to the City Council for final approval.

Section 2-314. Oath of Office; Bond.

Upon approval and appointment, every constable shall forthwith qualify for the office by presenting to the Mayor a surety bond in an amount approved by the City Administrator and by taking the required oath of office before the City Clerk, which oath shall be subscribed by the City Clerk, and filed and preserved in City Hall. Any constable who will serve a writ for forcible entry and detainer actions shall comply with the bonding requirements of 14 M.R.S.A. Section 703. The constable's certificate of appointment shall indicate that the constable is not allowed to carry any weapon, concealed or unconcealed, in the performance of duties.

Section 2-315. Removal.

The Mayor may remove any constable from office for cause, after notice and hearing.

(Ord. of 8-18-14)

Chapter 3

ALL-TERRAIN VEHICLES

Sec. 3-1. Purpose.

The purpose of this chapter is to regulate the use of all-terrain vehicles within the municipal boundaries of the city in order to protect the environment, to ensure that recreational use of all-terrain vehicles is compatible with other recreational uses, to promote the health and safety of the operators and the general public, and to restrict the use of such vehicles to areas where such use is appropriate and permitted. (Ord of 10-6-86, § A)

Sec. 3-2. Definitions.

For the purpose of this chapter, the following words and phrases shall have the meanings ascribed to them in this section:

All-terrain vehicle means a motor-driven, off-road, recreational vehicle capable of cross-country travel on land, snow, ice, marsh, swampland or other natural terrain. It includes, but is not limited to, a multitrack, multiwheel or low-pressure tire vehicle; a motor cycle or related two-wheel, three-wheel or belt driven vehicle; an amphibious machine; or other means of transportation deriving motive power from a source other than muscle or wind. This definition does not include a snowmobile; an airmobile; a construction or logging vehicle used for its common function; a farm vehicle used for farming purposes; or a vehicle used exclusively for emergency, military, law enforcement or fire control purposes.

ATV means an all-terrain vehicle.

Operate means to use an ATV in any manner within the jurisdiction of the city, whether or not the vehicle is moving.

Owner means any person holding title to an ATV. (Ord. of 10-6-86, § B)

Sec. 3-3. Administration.

The city clerk shall be the designated municipal agent for the issuance of ATV registrations, pursuant to state law. (Ord. of 10-6-86, § C)

Sec. 3-4. Operation.

(a) On land of another:

- (1) No person shall go upon or cross the private land of another to operate an ATV without first having obtained the written permission of the landowner, which written permission shall be carried on the person of the operator.
- (2) Any person operating an ATV on land of another shall stop and identify himself and shall produce his written permission to operate on the land upon the request of the landowner or his duly authorized representative or a law enforcement officer.

(b) Prohibited acts:

- (1) No person shall operate an ATV on city-owned property without the written permission of the city council. Such unlawful areas of operation include, but are not limited to, the following:
 - a. All sidewalks and streets, except for purposes of limited crossing as provided by state law.

- b. In or adjacent to all water bodies, including marshes, lakes, rivers and streams, including the Mill Brook and Stroudwater River valleys.
 - c. The grounds and parking lots of all schools and municipal buildings.
 - d. All parks, the city forest and all recreation fields and facilities, including bike paths, skating rinks and swimming pools.
 - e. Any cemetery or burial place.
 - f. Sewer easements and waste disposal sites.
- (2) No person shall operate an ATV, without written permission, in or adjacent to any utility right-of-way including railroad tracks, electrical power lines and petroleum pipelines.
- (3) Except with the written permission of the owner, no person may operate an ATV within two hundred (200) feet of any dwelling, church, school, hospital, nursing or convalescent home. (Ord. of 10-6-86, § D)

Sec. 3-5. Violations and penalties.

(a) *Civil penalty.* Any person who engages in any act prohibited by this chapter shall be liable for a civil penalty as set forth in section 1-8.

(b) *Additional penalties.* For any violation of the regulations governing ATVs, the owner or operator may be subject to the following penalties: Impoundment for a period of five (5) days for a first offense; ten (10) days for a second offense; thirty (30) days for any subsequent offense within a twelve-month period. The impounded vehicle will be stored until the impoundment fee found in the Master Fine Schedule attached hereto as Appendix C has been paid by the owner, together with unpaid fines. All sums collected shall inure to the city. (Ord. of 10-6-86, § E)

Chapter 4

ANIMALS AND FOWL

- Art. I.** [In General](#), §§ 4-1 - 4-24
Art. II. [Dogs](#), §§ 4-25 - 4-41
Art. III [Bees](#), §§ 4-42 - 4-54
Art. IV [Fowl and Poultry](#), §§ 4-55 - 4-69
Art. V [Animal Waste](#), §§ 4-70 – 4-73

ARTICLE I. IN GENERAL

Sec. 4-1. Livestock at large prohibited.

No owner or person having charge of any horse, cow, ox, beef cattle, swine, goat or other grazing animal shall turn loose or knowingly permit the same to go at large in any street or property of another. (Ord. of 8-19-85)

Sec. 4-2. Pens, yards to be clean.

All animals shall be kept in such place, regardless of zoning restrictions, and in such manner, as not to be offensive to neighboring residents or the public. Pens and yards shall be kept deodorized by dried earth or other effective absorbent. (Ord. of 8-19-85)

Sec. 4-3. Required action upon finding dead or dying animals.

When any animal is found dead or dying on the private premises of any person not the owner or person in charge of such animal, or is so found in any public street or place, any person having knowledge of the matter shall report the facts immediately to the police department, and the police department shall take charge of the animal forthwith.

If by license or otherwise, the owner of such animal is known to the police department, the department shall notify at once such owner, who shall immediately dispose of the body. If the owner is unknown, the department shall dispose of the animal forthwith. (Ord. of 8-19-85)

Sec. 4-4. Disposal of dead or dying animals on public, private property.¹

(a) *On public property.* No person shall dispose of any dead or fatally sick or injured animal on public property except with the approval of the municipal officers and in accordance with regulations set by the municipal officers.

(b) *On private property.* No person shall dispose of any dead or fatally sick or injured animal on private property unless such animal is thoroughly covered in such a manner that no part is exposed to view and that no odor shall emanate therefrom. Provided further that such an animal must be covered in such a manner that it could not reasonably be expected to be exposed by the action of the elements or by other animals. (Ord. of 8-19-85)

¹ **State law reference** – Depositing of dead animals where nuisance, 22 M.R.S.A. § 1562.

Sec. 4-5. Conveyance of dead animals through streets.

No person shall carry or convey any dead animal through or upon any street or public place unless the same is so covered that no part of it is exposed to view and no odors can emanate therefrom. (Ord. of 8-19-85)

Sec. 4-6. Surrender for quarantine or destruction mandatory.

No person shall fail or refuse to surrender any animal for quarantine or destruction as required in this chapter when demand is made therefor by the canine control officer. (Ord. of 9-9-69, § 13)

Sec. 4-7. Rabies—Disposition of bitten animals.

During the period of a rabies quarantine as provided in this chapter, every animal bitten by an animal adjudged to be rabid shall be forthwith destroyed or, at the owner's expense and option, shall be treated for rabies infection by a licensed veterinarian, or held thirty (30) days under quarantine by the owner in the same manner as other animals are quarantined. (Ord. of 8-19-85)

Sec. 4-8. Same—Canine control officer to direct disposition.

The canine control officer shall direct the disposition of any animal found to be infected with rabies. (Ord. of 8-19-85)

Sec. 4-9. Same—Surrender of carcass to canine control officer.

The carcass of any dead animal exposed to rabies shall, upon demand, be surrendered to the canine control officer. (Ord. of 8-19-85)

Sec. 4-10. Impoundment authorized.

Any police officer or person exercising police power shall have the authority to impound animals, other than dogs, in violation of this chapter. (Ord. of 8-19-85)

Sec. 4-11. Reclaiming impounded animals.

Any animal, other than a dog, impounded under the provisions of this chapter may be reclaimed by the owner upon payment of the impoundment fees as set forth in the the Master Fine Schedule attached hereto as Appendix C. (Ord of 8-19-85)

Sec. 4-12. Impoundment fees.

(a) Any animal impounded hereunder may be reclaimed after payment to the city, through the police department, of the impoundment fees set forth in the Master Fine Schedule attached hereto as Appendix C.

(b) In addition to the charges for impoundment, the owner shall pay a further fee for board to, the animal shelter, in accordance with its current fee schedule. (Ord. of 8-19-85)

Sec. 4-13. Authority to transfer title of impounded animals.

The city may transfer title of all animals held by it at its animal shelter after the legal detention period of eight (8) days has expired and the animal has not been claimed by its owner. (Ord. of 8-19-85)

Sec. 4-14. Disposal of impounded animals.

Any animal impounded under the provisions of this chapter and not reclaimed by its owner within eight (8) days may be humanely destroyed or placed in the custody of some person

deemed to be a responsible and suitable owner, who will agree to comply with the provisions of this chapter. (Ord. of 8-19-85)

Secs. 4-15 - 4-24. Reserved.

ARTICLE II. DOGS

Sec. 4-25. Definitions.

Unless the context otherwise indicates, the following definitions as used in this article shall be construed according to the definitions given below :

At large shall mean off the premises of the owner, unless on another's premises by permission of the owner or occupant thereof, and not controlled by a leash, cord, chain or other tether, of not more than eight (8) feet in length.

Dangerous dog shall mean a dog which shall cause reasonable fear of bodily injury to any person by attacking or threatening to attack such person.

Dog shall be intended to mean both male and female of the species.

Owner shall be intended to mean any person or persons, firm, association or corporation owning, keeping, or harboring a dog. (Ord. of 8-19-85)

Sec. 4-26. Number of dogs limited; exception to breeders, etc.

It shall be unlawful for any person to keep or harbor within the city more than three (3) dogs over six (6) months old in or about any premises, house, barn or other building or in or about all buildings on any one (1) premises occupied by any one (1) family, and the keeping or harboring of dogs as aforesaid is hereby declared to be a nuisance.

The payment of a license fee shall not be construed to allow the keeping of more than three (3) dogs, as aforesaid, on any one (1) premises.

This limitation shall not apply to any person engaged in the commercial business of breeding, buying, selling, boarding of dogs or operating a veterinary hospital. (Ord. of 8-19-85)

Sec. 4-27. License required.¹

No dog shall be kept within the city unless such dog has been licensed and such license displayed by the owner in accordance with state law. (Ord. of 9-9-69, § 2; Ord. of 8-19-85)

Sec. 4-28. Running at large prohibited.

No dog shall be permitted to run at large within the city. (Ord. of 8-19-85)

Sec. 4-29. Impoundment authorized; disposal of the unclaimed.

Unlicensed dogs, whether or not at large, and dogs found running at large, whether or not licensed, shall be taken up and impounded in the shelter designated by the city as the city animal shelter, and there confined in a humane manner for a period of not less than eight (8) days; and may thereafter be disposed of in a humane manner if not claimed by their owners. (Ord. of 8-19-85)

Sec. 4-30. Reclaiming after impoundment.

¹ **State law reference** – Similar provisions, 7 M.R.S.A., § 3922 et seq.

The owner of an impounded dog shall be entitled to resume possession of such dog upon compliance with the license provisions of this article and the payment of the impoundment fees as set forth in the Master Fine Schedule attached hereto as Appendix C. (Ord. of 8-19-85)

Sec. 4-31. Disposition of dogs causing personal injury.

It shall be unlawful for the owner or keeper of any dogs, upon being notified that such dog has bitten any person or has injured any person as to cause an abrasion of the skin, to either sell or give away such dog or to permit such dog to be taken beyond the limits of the city, except under the care of a veterinarian, or to destroy such dog without permission from the canine control officer.

The owner, upon receiving such notice, shall immediately place such dog under confinement for a period of at least fourteen (14) days or shall deliver such dog to the police department. (Ord. of 8-19-85)

Sec. 4-32. Mayor's authority to proclaim rabies quarantine.¹

Upon positive diagnosis of rabies in any dog within the city, the mayor shall proclaim and invoke a city-wide quarantine for a period of thirty (30) days, and upon the invoking of such quarantine, no animal shall be permitted in the streets during such period.

In the event that additional cases of rabies are detected during the quarantine, the mayor may extend such period for an additional six (6) months. (Ord. of 8-19-85)

Sec. 4-33. Impoundment of bitten dogs.

Any dog which shall have been bitten by another dog having or suspected of having rabies shall be immediately impounded for observation as provided in this article. (Ord. of 8-19-85)

Sec. 4-34. Canine officer to be notified of deaths of confined dogs.

The canine control officer shall be notified immediately by the person in charge of the city animal shelter of the death of any dog while under confinement. (Ord. of 8-19-85)

Sec. 4-35. Canine control officer to investigate dog bites.

The canine control officer shall investigate all dog bites referred to him by the police department. (Ord. of 8-19-85)

Sec. 4-36. Killing vicious dogs.

If any dangerous, fierce, or vicious dog cannot be safely taken up and impounded, such dog may be slain by any policeman or duly authorized canine control officer. (Ord. of 8-19-85)

Sec. 4-37. Canine officer to receive remains of dogs injuring persons.

In the event a policeman slays a dog which has bitten or caused a skin abrasion to a person and less than fifteen (15) days have elapsed from injury, the policeman shall deliver the carcass and brain forthwith to the canine control officer. (Ord. of 8-19-85)

Sec. 4-38. Bitches in heat.

The owner of any bitch in heat shall keep the same confined or on a leash at all times and shall not permit such dog to be at large within the city or on any premises other than those of the

¹ **State law reference** – Dept. of Health and Welfare may order mayor of city to have dogs killed in violation of quarantine, 22 M.R.S.A., § 1311.

owner. Each bitch found in violation hereof is hereby declared a nuisance and shall be impounded, and the owner shall be deemed guilty of a civil infraction. (Ord. of 8-19-85)

Sec. 4-39. Dangerous dogs a nuisance; owner's responsibility.

A dangerous dog, as defined in section 4-25, is hereby declared a nuisance. The owner of any such dog shall keep the same confined in a secure enclosure or on a chain or leash controlled by the owner at all times and shall not permit such dog to be at large within the city. (Ord. of 8-14-85)

Sec. 4-40. Dogs disturbing the peace.

No person shall own or keep any dog which creates a nuisance by habitually barking, biting, howling or in any other manner disturbing the peace and quiet of any other person, regardless of the time of day. Any person, upon the first occasion of violating this provision, shall be given a warning by the animal control officer or any law enforcement officer, that his dog or dogs have been disturbing the peace and quiet of another person or persons. The owner or keeper, upon any subsequent violation within six (6) months from such a warning, commits a civil violation. (Ord. of 8-19-85)

Sec. 4-41. *Repealed.*

(Ord. of 8-19-85; Ord. of 12-16-02)

ARTICLE III. BEES

Sec. 4-42. Purpose and authority.

(a) Honey bees are of benefit to mankind by providing agriculture, fruit and garden pollination services and by furnishing honey, wax, and other useful products. Domestic strains of honey bees have been selectively bred for desirable traits, including gentleness, honey production, and tendency not to swarm and, as a result, gentle strains of honey bees can usually be maintained within populated areas in reasonable densities without causing a nuisance if the bees are properly located and carefully managed. The purpose of this Ordinance is to provide appropriate regulations for the keeping of bees within the City of Westbrook so that the safety of property owners and beekeepers is ensured.

(b) This Ordinance is adopted pursuant to 30-A M.R.S.A. § 3001.

Sec. 4-43. Definitions.

As used in this article, the following words and terms shall have the meanings described in this section unless the context of their usage clearly indicates another meaning:

Apiary: A place where bee colonies are kept.

Bee: Any stage of the common domestic honey bee, Apis mellifera species.

Colony: A hive and its equipment and appurtenances including bees, comb, honey, pollen, and brood.

Hive: A structure intended for the housing of a bee colony.

Tract: A contiguous parcel of land under common ownership.

Undeveloped property: Any idle land that is not improved or actually in the process of being improved with residential, commercial, industrial, church, park, school, or governmental facilities or other structures or improvements intended for human use occupancy and the grounds maintained in association therewith. The term shall be deemed to include property developed exclusively as a street or highway or property used for commercial agricultural purposes.

Sec. 4-44. Certain conduct declared unlawful.

(a) The purpose of this article is to establish certain requirements of sound beekeeping practices, which are intended to avoid problems that may otherwise be associated with the keeping of bees in populated areas.

(b) Notwithstanding compliance with the various requirements of this article it shall be unlawful for any beekeeper to keep any colony or colonies in such a manner or of such disposition as to cause any unhealthy condition, interfere with the normal use and enjoyment of human or animal life of others, or interfere with the normal use and enjoyment of any public property or property of others.

Sec. 4-45. Hives.

All bee colonies shall be kept in Langstroth type hives with removable frames, which shall be kept in sound and usable condition.

Sec. 4-46. Fencing of flyways.

In each instance in which any colony is situated within twenty-five feet of a public or private property line of the tract upon which the apiary is situated, as measured from the nearest point on the hive to the property line, the beekeeper shall establish and maintain a flyway barrier at least six feet in height consisting of a solid wall, fence, dense vegetation, or combination thereof that is parallel to the property line and extends ten feet beyond the colony in each direction so that all bees are forced to fly at an elevation of at least six feet above ground level over the property lines in vicinity of the apiary. It is a defense to prosecution under this section that the property adjoining the apiary tract in the vicinity of the apiary is undeveloped property for a distance of at least twenty-five feet from the property line of the apiary tract.

Sec. 4-47. Water.

Each beekeeper shall ensure that a convenient source of water is available at all times to the bees so that the bees will not congregate at swimming pools, bib cocks, pet watering bows, bird baths, or other water sources where they may cause human, bird, or domestic pet contact.

Sec. 4-48. General maintenance.

Each beekeeper shall ensure that no bee comb or other materials that might encourage robbing are left upon the grounds of the apiary site. Upon their removal from the hive all such materials shall promptly be disposed of a sealed container or placed within a building or other bee proof enclosure.

Sec. 4-49. Queens.

In any instance in which a colony exhibits unusually aggressive characteristics by stinging or attempting to sting without due provocation or exhibits an unusual disposition towards swarming, it shall be the duty of the beekeeper to promptly re-queen the colony. Queens shall be selected from stock bred for gentleness and non-swarming characteristics.

Sec. 4-50. Colony densities.

- (a) It shall be unlawful to keep more than the following number of colonies on any tract within the City, based upon the size of configuration of the tract on which the apiary is situated:

1. One—quarter acre or less tract size —— 2 colonies,
2. More than one—quarter acre but less than one—half acre tract size —— 4 colonies
3. More than one half acre but less than one acre tract size —— 6 colonies,
4. One acre or larger tract size —— 8 colonies
5. Regardless of tract size, where all hives are situated at east two hundred feet in any direction from all property lines of the tract on which the apiary is situated, there shall be no limit to the number of colonies,
6. Regardless of tract size, so long as all property, other than the tract upon which the hives are situated, that is within a radius of at least two hundred feet from any hive remains undeveloped property there shall be no limit to the number of colonies.

(b) For each two colonies authorized under Colony densities (subsection a) there may be maintained upon the same tract one nucleus colony in a hive structure not exceeding one standard 9 5/8 inch depth ten frame hive body with no supers attached as required from time to time for managements of swarms. Each such nucleus colony shall be disposed of or combined with an authorized colony within thirty (30) days after the date is acquired.

Sec. 4-51. Marking hives, presumption of beekeeping.

(a) In apiaries the name and telephone number of the beekeeper shall be branded, painted, or otherwise clearly marked upon the structure of at least two hives and placed at opposite ends of the apiary. Instead of marking the hives, the beekeeper may conspicuously post a sign setting forth the name and telephone number of the beekeeper.

(b) Unless marked in accordance with subsection (a) it shall be presumed for purposes of this article that the beekeeper is the person or persons who own or otherwise have the present

right of possession and control of the tract upon which a hive or hives are situated. The presumption may be rebutted by a written agreement authorizing another person to maintain the colony or colonies upon the tract setting forth the name, address, and telephone number of the other person who is acting as the beekeeper.

Sec. 4-52. Inspections.

The health officer shall have the right to inspect any apiary between the hours of 8:00 a.m. and 5:00 p.m. Prior notice shall be given to the beekeeper if he resides at the apiary or if his name is marked on the hives.

Sec. 4-53. Compliance.

(a) Upon receipt of information that any colony situated within the City is not being kept in compliance with this article, the health officer shall cause an investigation to be conducted. If he determines that a violation has occurred, he shall issue a written notice of violation to the beekeeper.

(b) The notice of violation shall state the nature of the violation and shall establish a time in which the beekeeper shall bring the hives or apiary into compliance with the requirements of this Ordinance. If the beekeeper fails to comply with the time period set forth in the notice of violation, the health officer shall have the authority to destroy or remove the bees from the premises. The health officer may also enforce this Ordinance under the provisions of 30-A M.R.S.A. § 4452 where the violation is also a violation of the terms of a special exception permit or other provision of the Land Use Ordinances.

Any notice of violation shall be given by United States mail or personal delivery. However, if the health officer is unable to locate the beekeeper, then the notice may be given by publication one time in a newspaper of general circulation at least five (5) days prior to the date of the hearing.

(c) A beekeeper shall have the right to appeal the health officer's interpretation of this ordinance as set forth in the notice of violation. Such appeal shall be filed in writing within thirty (30) days from the date of the notice of violation. The hearing shall be conducted by the Board of Appeals under the procedures established by Section 703 of the Land Use Ordinances.

(d) The decision of the Board of Appeals may be appealed to the Superior Court in accordance with the provisions of 30-A M.R.S.A. § 2691. An appeal shall not stay the health officer's decision, unless otherwise ordered by the Superior Court.

(e) The provisions of this section shall not be construed to require the conduct of a hearing for the destruction of (i) any bee colony not residing in a hive structure intended for beekeeping or (ii) any swarm of bees or (iii) any colony residing in a standard or man-made hive, which by virtue of its condition, has obviously been abandoned by the beekeeper or (4) any swarm or colony of bees containing diseased bees. In such a circumstance, the health officer may cause the bees to be destroyed and the hive structures to be removed. If possible, the health officer shall give notice to the beekeeper or property owner prior to such destruction. Any

usable components of the hive structure

In instances where the hearing officer find that the violations were not intentional and that the beekeeper has employed corrective actions that will probably be effective to cure the violations alleged, then he may issue a warning, in lieu of ordering the bees destroyed or removed. Upon failure of the beekeeper to comply with the order the health officer may cause the bees to be destroyed and the hive structures to be removed. In each instance in which a bee colony is destroyed all usable components of the hive structure that are not damaged or rendered unhealthy by the destruction of the bees shall upon the beekeeper's request be returned to the beekeeper, provided that the beekeeper agrees to bear all transportation expenses for their return.

Sec. 4-54. Severability.

If any provision, section, subsection, sentence, clause, or phrase of this ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this ordinance or their application to other persons or sets of circumstances shall no be affected thereby, it being the intent of the city council in adopting this ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this ordinance are declared to be severable for the purpose.

(Ord. of 3-3-08)

ARTICLE IV. FOWL AND POULTRY

Sec. 4-55. Purpose.

The purpose of this article is to provide standards for the keeping of fowl and poultry within the identified residential growth areas of the City of Westbrook. This article is intended to reduce the potential for conflicts between neighbors that may arise if the keeping of fowl or poultry creates a nuisance. A nuisance may be created when the keeping of fowl and poultry is not done in a way that maintains the health, safety and welfare of the community. This includes, but is not limited to, noise, odor, unsanitary animal living conditions, unsanitary waste storage and removal, the attraction of rodents and parasites/insects, non-confined animals leaving the owner's property.

It is the responsibility of all owners of these animals to maintain conditions that will improve, rather than detract, from the quality of life in the community's residential neighborhoods.

Sec. 4-56. Structures.

Structures erected for the housing of fowl and poultry shall be designed to reduce undue pollution, noise, odor or trespassing on either public or private property.

- Structures shall either be enclosed on all sides, or include individual pen doors that can be closed to mitigate noise during nighttime or early morning hours.

- The types of roofing and siding must take into account existing conditions in the neighborhood.

Sec. 4-57. Fencing and screening.

Fencing shall be erected to confine animals to an established area of the property. The fencing shall be of a height that does not allow the animals to leave the fenced in area without human assistance. Fencing shall take into account existing conditions in the neighborhood. Appropriate types of fencing include chicken wire, stockade, and picket. The use of chain-link fencing for the enclosure of fowl or poultry is prohibited in the city's defined residential growth areas.

Vegetative buffering must be used to completely screen the area from abutting properties when non-solid fencing is used.

Sec. 4-58. Waste storage and removal.

Provisions must be made for the storage and removal of fowl and poultry manure. To avoid the risk of odors, all stored manure shall be covered by a fully enclosed structure with a roof over the entire structure. Manure shall be covered and confined in such a manner as to not allow its spread onto abutting properties. No more than three (3) cubic feet of manure shall be stored on properties defined as Hobby Farms in the Land Use Ordinances. All other manure not used for fertilizing shall be removed.

Sec. 4-59. Lighting.

Lighting to protect fowl and poultry from predators and intruders shall be a 90 degree cut-off luminaire. All lighting must be set to a motion detector so that the lighting is turned off when no motion is detected.

Sec. 4-60. Proximity to waterbodies.

In cases where the fowl or poultry is kept on a property within 100 feet of a waterbody or drainage way, provisions must be made to control the run-off of pollution to the waterbody. To accomplish this goal, all manure must be kept within a roofed enclosure.

Sec. 4-61. Rodents and insects/parasites.

The property owner shall take necessary action to reduce the infestation of insects and parasites. Fowl and poultry found to be infested with insects and parasites that may result in unhealthy conditions to human habitation shall be removed by the Animal Control Officer. The Animal Control Officer may delay the removal of the animals through the establishment and completion of a plan of action.

The property owner shall take necessary action to prevent the entry of rodents and/or predators into the fowl or poultry living area. Fowl and poultry that are not housed in an environment that prevents the infestation of rodents may be removed by the Animal Control Office.

Sec. 4-62. Number of animals per lot size limits.

It shall be unlawful to keep more than the following number of fowl or poultry on any parcel within the city, based upon the size of the parcel on which the animals are situated:

| <u>Lot size</u> | <u>Number of poultry/fowl</u> |
|----------------------------------|-------------------------------|
| 10,000 sq. ft. to 19,999 sq. ft. | 6 |
| 20,000 sq. ft. to 39,999 sq. ft. | 12 |
| 40,999 sq. ft. to 79,999 sq. ft. | 50 |
| 80,000 sq. ft. and greater | no limit. |

Sec. 4-63. Severability.

If any provision, section, subsection, sentence, clause, or phrase of this ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the city council in adopting this ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this ordinance are declared to be severable for the purpose.

Secs. 4-64 - 4-69. Reserved.

(Ord. of 3-3-08)

ARTICLE V. ANIMAL WASTE**Sec. 4-70. Sanitation.**

No owner or custodian of any animal shall cause or allow such animal to soil, defile or defecate on any public property or upon any street, sidewalk, esplanade, parking lot, park or play area; or common grounds owned jointly by members of a homeowners or condominium association; or upon private property other than that of the animal owner or custodian, unless such owner or custodian immediately removes and disposes of all feces deposited by such animal by the following methods:

- (a) Immediate collection of the feces by appropriate implement and placement in a paper or plastic bag or other container; and
- (b) Removal of such bag or container to the property of the animal owner or custodian for disposal in toilet facilities; by burial; or in a location and in a manner otherwise expressly permitted by law. (Ord. of 12-16-02)

Sec. 4-71. Exception.

The foregoing section shall not apply to an animal accompanying a handicapped person who, by reason of his disability, is physically unable to remove and properly dispose of the excrement. (Ord. of 12-16-02)

Sec. 4-72. Enforcement.

The provisions of this article shall be enforced by the animal control officer or other designee of the chief of police. (Ord. of 12-16-02)

Sec. 4-73. Penalty.

Whoever owns, keeps or possesses an animal contrary to the provisions of this chapter shall be punished by a fine as set forth in the Master Fine Schedule attached hereto as Appendix C, to be recovered by complaint for the use of the city before the Ninth District Court, Division of Southern Cumberland County, together with such equitable relief as the Court deems appropriate. (Ord. of 12-16-02)

Chapter 5

BICYCLES¹

Sec. 5-1. Applicability of regulations; parental responsibility.

(a) It is a misdemeanor for any person to do any act forbidden or fail to perform any act required in this chapter.

(b) The parent of any child and the guardian of any ward shall not authorize or knowingly permit any such child or ward to violate any of the provisions of this chapter.

(c) These regulations applicable to bicycles shall apply whenever a bicycle is operated upon any highway or upon any path set aside for the exclusive use of bicycles subject to those exceptions stated herein. (Ord. of 7-13-65, § 10-1)

Sec. 5-2. Applicability of traffic laws, ordinances.

Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of this state declaring rules of the road applicable to vehicles or by the traffic ordinances of the city applicable to the driver of a vehicle, except as to special regulations in this chapter and except as to those provisions of the laws and ordinances which by their nature can have no application. (Ord. of 7-13-65, § 10-11)

Sec. 5-3. Obedience to traffic-control devices.

(a) Any person operating a bicycle shall obey the instructions of official traffic-control signals, signs and other control devices applicable to vehicles, unless otherwise directed by a police officer.

(b) Whenever authorized signs are erected indicating that no right, left or "U" turn is permitted, no person operating a bicycle shall disobey the direction of any such sign, except where such person dismounts from the bicycle to make any such turn, in which event such person shall then obey the regulations applicable to pedestrians. (Ord. of 7-13-65, § 10-12)

Sec. 5-4. Lamps, other equipment.

(a) Every bicycle when in use at nighttime shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least two hundred (200) feet to the front and with a red reflector on the rear of a type which shall be visible from all distances from fifty (50) feet to three hundred (300) feet to the rear when directly in front of lawful upper beams of headlamps on a motor vehicle. A lamp emitting a red light visible from a distance of five hundred (500) feet to the rear may be used in addition to the red reflector.

(b) No person shall operate a bicycle unless it is equipped with a bell or other device capable of giving a signal audible for a distance of at least one hundred (100) feet, except that a bicycle shall not be equipped with nor shall any person use upon a bicycle any siren or whistle.

(c) Every bicycle shall be equipped with a brake which will enable the operator to make the braked wheel skid on dry, level, clean pavement. (Ord. of 7-13-65, § 10-20)

Sec. 5-5. License for residents; attachment required.

¹ **State law reference** – Bicycle regulations generally, 29-A M.R.S.A. § 2321 et seq.

No person, who resides in the city, shall ride or propel a bicycle on any street or upon any public path set aside for the exclusive use of bicycles unless such bicycle has been licensed and a license plate is attached thereto as provided herein. (Ord. of 7-13-65, § 10-2)

Sec. 5-6. Application for license, plate; fee.

Application for a bicycle license and license plate shall be made upon a form provided by the city and shall be made to the chief of police.

An annual license fee, as set forth in the Master Fee Schedule attached hereto as Appendix B shall be paid to the city before each license or renewal thereof is granted. This fee may be waived, when, in the opinion of the chief of police, the applicant has completed an approved bicycle safety course. (Ord. of 7-13-65, § 10-3; Ord. of 9-10-73)

Sec. 5-7. Issuance of license; records.

(a) The chief of police, upon receiving proper application for a bicycle license is hereby authorized to issue bicycle licenses which shall expire biennially on the last day of April.

(b) The chief of police shall not issue a license for any bicycle when he knows or has reason to believe that the applicant is not the owner of or entitled to the possession of such bicycle.

(c) The chief of police shall keep a record of the number of each license, the date issued, the name and address of the person to whom issued, and the number of the frame of the bicycle for which issued, and a record of all bicycle license fees collected by him. (Ord. of 7-13-65, § 10-4)

Sec. 5-8. Issuance of license plate; attachment required; unauthorized removal.

(a) The chief of police, upon issuing a bicycle license, shall also issue a license plate bearing the license number assigned to the bicycle and the name of the city, the calendar year for which issued and the expiration date thereof.

(b) The chief of police shall cause each license plate to be firmly attached to the rear mudguard or frame of the bicycle for which issued in such position as to be plainly visible from the rear.

(c) No person shall remove a license plate from a bicycle during the period for which issued, except upon a transfer of ownership or in the event the bicycle is dismantled and no longer operated upon any street in the city. (Ord. of 7-13-65, § 10-5)

Sec. 5-9. Inspection prior to licensing.

The chief of police, or an officer assigned such responsibility, shall inspect each bicycle before licensing the same and shall refuse a license for any bicycle which he determines is in an unsafe mechanical condition. (Ord. of 7-13-65, § 10-6)

Sec. 5-10. Renewal of license.

Upon the expiration of any bicycle license, such license may be renewed upon application and payment of the same fee as upon an original application. (Ord. of 7-13-65, § 10-7)

Sec. 5-11. Transfer of ownership.

Upon the sale or other transfer of a licensed bicycle, the licensee shall remove the license plate and shall either surrender the same to the chief of police or may upon proper application, but without payment of an additional fee, have such plate assigned to another bicycle owned by the applicant. (Ord. of 7-13-65, § 10-8)

Sec. 5-12. Rentals regulated.

A rental agency shall not rent or offer any bicycle for rent unless the bicycle is licensed and a license plate is attached thereto as provided herein and such bicycle is equipped with the lamps and other equipment required in this chapter. (Ord. of 7-13-65, § 10-9)

Sec. 5-13. Reports by dealers.

Every person engaged in the business of buying or selling new or secondhand bicycles shall make a report to the chief of police of every bicycle purchased or sold by such dealer, giving the name and address of the person from whom purchased or to whom sold, a description of such bicycle by name and make, the frame number thereof, and the number of license plate, if any, found thereon. (Ord. of 7-13-65, § 10-10)

Sec. 5-14. Rider to be on seat; number of passengers.

(a) Every person propelling a bicycle shall not ride other than astride a permanent and regular seat attached thereto.

(b) No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped. (Ord. of 7-13-65, § 10-13)

Sec. 5-15. Riding on roadways, bicycle paths.

(a) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

(b) Persons riding bicycles upon a roadway shall not ride more than two (2) abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

(c) Wherever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway. (Ord. of 7-13-65, § 10-14)

Sec. 5-16. Speed.

No person shall operate a bicycle at a speed greater than is reasonable and prudent under the conditions then existing. (Ord. of 7-13-65, § 10-15)

Sec. 5-17. Emerging from alley, driveway or building.

The operator of a bicycle emerging from an alley, driveway or building shall, upon approaching a sidewalk or the sidewalk area extending across any alleyway, yield the right-of-way to all pedestrians approaching on such sidewalk or sidewalk area, and upon entering the roadway shall yield the right-of-way to all vehicles approaching on such roadway. (Ord. of 7-13-65, § 10-16)

Sec. 5-18. Carrying articles.

No person operating a bicycle shall carry any package, bundle or article which prevents the rider from keeping at least one (1) hand upon the handlebars. (Ord. of 7-13-65, § 10-17)

Sec. 5-19. Parking.

No person shall park a bicycle upon a street other than upon the roadway against the curb or upon the sidewalk in a rack to support the bicycle or against a building or at the curb, in such manner as to afford the least obstruction to pedestrian traffic. (Ord. of 7-13-65, § 10-18)

Sec. 5-20. Riding on sidewalks prohibited.

No person shall ride a bicycle upon any sidewalk in any district. (Ord. of 7-13-65, § 10-19)

Sec. 5-21. Penalty; impoundment.

Any person seventeen (17) years of age or over who violates any of the provisions of this chapter shall, upon conviction, be punished in accordance with section 1-8 of this Code. The chief of police, when satisfied that a juvenile under the age of seventeen (17) years has ridden a bicycle in violation of any of the provisions of this chapter, may impound the bicycle for a period not to exceed five (5) days for the first offense, for a period not to exceed ten (10) days for a second offense, for a period not to exceed thirty (30) days for any subsequent offense. (Ord. of 7-13-65, § 10-21)

Chapter 6
BUILDINGS¹

Art. I. [In General](#), §§ 6-1 - 6-16

Art II. [Floodplain Management Requirements](#), §§ 6-17 – 6-34

Art. III [Surface Drainage](#), §§ 6-35 – 6-39

ARTICLE I. IN GENERAL

Sec. 6-1. Applicability.

This chapter relates to the design, materials of construction, construction, alteration, maintenance, repair, and use of buildings and structures or parts thereof to promote the health, safety and general welfare of the occupants and users of such buildings and structures, and of the public, and for protection against catching and spreading of fires, and prevention of accidents. (1942 Rev. Code, Ch. XXVII)

Sec. 6-2. Maine Uniform Building and Energy Code

The construction, alteration, addition, repair, removal, demolition, use, occupation, location and maintenance of all buildings and structures, shall comply with the Maine Uniform Building and Energy Code (“MUBEC”). (Ord. of 12-5-62, § 1; Ord. of 6-2-70; Ord. of 3-5-79; Ord. of 4-23-01; Ord. of 1-9-06; 7-2-12)

Sec. 6-2.1. Repealed.

(Ord. of 8-5-74; Ord. of 3-5-79; Ord. of 12-19-83; Ord. of 7-6-87; Ord. of 4-23-01; Ord. of 1-9-06; 7-2-12)

Sec. 6-2.2. Repealed.

(Ord. of 8-5-74; Ord. of 3-5-79)

Sec. 6-3. Department of building inspection.

The city's department of building inspection, which is hereby established, shall be under the charge and direction of the code enforcement officer who shall perform all the duties and functions of the building inspector as herein provided. (1942 Rev. Code, Ch. XXXIII, § 101(a); Ord. of 2-21-77)

Sec. 6-4. Repealed.

(Ord. of 2-21-77)

Sec. 6-5. Municipal officers to establish inspector's jurisdiction.

The municipal officers shall define the limits within which the building inspector shall have jurisdiction, which shall include the thickly settled portion of the city.

Sec. 6-6. Appointment of deputy inspector authorized; duties generally.

Whenever the building inspector shall become incapacitated, the municipal officers may appoint or authorize the inspector to appoint a deputy building inspector who shall serve until re-

¹ **State law reference** – Municipal inspection of buildings, 25 M.R.S.A. §§ 2351-2360.

moved by the municipal officers, but in no event beyond the term for which the building inspector was appointed.

The deputy shall perform such duties as may be required of him by the inspector. (1942 Rev. Code, Ch. XXXIII, § 101(D))

Sec. 6-7. Inspector's qualifications generally.

The person appointed building inspector shall possess the following qualifications: He shall have had at least five (5) years' practical experience as an architect, builder, registered mechanical, civil, or structural engineer, building construction superintendent, building construction foreman, or inspector of building construction. (1942 Rev. Code, Ch. XXXIII, § 101(B))

Sec. 6-8. Inspector's duties generally.

The duties of the building inspector shall be:

- (a) To enforce this Code, to examine all applications for permits, to sign and issue permits, certificates and notices, and to inspect buildings, structures, equipment and appliances therein erected, altered, repaired or installed under permits issued by the department.
- (b) To examine buildings, structures, equipment, and apparatus thereof, therein, or thereon which he shall have cause to believe are dangerous, to investigate all complaints made in writing and to take such action as is stipulated herein or in the laws of this state.
- (c) To make an annual report to the mayor and council, to keep dated records showing the location, character, use, cost and specifications of buildings, structures and equipment and apparatus thereof, therein, or thereon for which certificates or permits are issued, showing complaints filed with the department and showing matters, and records of all fees and other monies collected. (1942 Rev. Code, Ch. XXXIII, § 101(F); Ord. of 1-9-96)

Sec. 6-9. Mayor to appoint inspector a constable.

The mayor shall appoint the building inspector a legal constable for the period of the inspector's term of office which shall be one year. (1942 Rev. Code, Ch. XXXIII, § 101(C))

Sec. 6-10. Council may appoint assistants to department.

The council may appoint and arrange for the payment of as many assistants as may be necessary for the proper conduct of the department of buildings inspector. (Ord. of 5-4-64, Ch. XXXIII, § 101(E))

Sec. 6-11. Authorized personnel to perform inspections; certificates issued subsequent to written, certified report.

Inspections required under the provisions of this chapter shall be made by the building inspector, a duly appointed assistant or a deputy, provided that he may accept reports of inspectors of recognized inspection services, after investigation of their qualifications and reliability. No certificates called for by any provision of this chapter shall be based on such reports unless the same are in writing and certified by a responsible officer of such a service. (1942 Rev. Code, Ch. XXXIII, § 101(F)(4))

Sec. 6-12. Fees to be paid for permits.

No application for a building permit shall be considered to have been filed until the stipulated fee therefor has been paid in full to the city.

Provided, however, that no permit fee shall be charged to any resident sixty-two (62) years of age or older for work to be done on their own personal dwelling. (Ord. of 3-15-55; Ord. of 9-14-70; Ord. of 5-5-75)

Sec. 6-13. Fee schedule.

The fees accompanying this chapter are set forth in the Master Fee Schedule attached hereto as Appendix B.

(Ord. of 9-14-70; Ord. of 7-6-82; Ord. of 3-3-86; Ord. of 1-22-91; Ord. of 1-25-99; Ord. of 11-25-02; Ord. of 10-3-05; Ord. of 1-9-06; Ord. of 6-16-06)

Sec. 6-14. Permit, fee, bond for moving large objects through streets; validity of permits.

In addition to the requirements of the building code, no person shall haul, move or draw through, over or upon any street, way or public place in the city any building or structure without first obtaining a permit therefor, which may be granted by the mayor upon a written application therefor approved by the chief of police and the filing with the city treasurer of a bond in the sum of one thousand dollars (\$1,000.00) with sureties approved by the city solicitor indemnifying and saving harmless the city from any and all costs or claims for damage occasioned thereby.

Said permit when granted shall be valid for a period of thirty (30) days from the date it is issued and, unless otherwise specifically authorized in writing by the chief of police, it shall be invalid between the hours of 6:00 a.m. and midnight. (1942 Rev. Code, Ch. XVI, § 17, Ord. of 5-3-60; Ord. of 9-14-70; Ord. of 1-9-06)

Sec. 6-15. Contents of moving permit; issuance when necessary to disconnect, remove wires.

(a) The application, required by the preceding section, shall set forth a general description of building or structure to be moved, with its dimensions, and designate the particular streets over which it is to be moved; also a statement as to whether or not it shall be necessary to cut, disconnect or remove any wires or poles belonging to a public utility for such purpose.

(b) In the event it is necessary to cut, disconnect, or remove any wires or poles belonging to a public utility for such purpose, such permit may only be granted by the municipal officers, after due notice and hearing, in accordance with the provisions of the 35-A M.R.S.A. § 2516, unless such petition shall be accompanied by written permission from such public utilities for the cutting, disconnecting, or removal of such wires or poles. (1942 Rev. Code, Ch. XVI, § 17; Ord. of 5-3-60; Ord. of 1-9-06)

Sec. 6-16. Swimming pools.

(a) *Permit required.* A building permit shall be required for the installation of any swimming pool which is located below ground level.

(b) All swimming pools must comply with the swimming pool fencing standards contained in Appendix G of the 2nd edition of the 2009 International Residential Code, as may be amended. (Ord. of 12-27-73; 7-2-12)

ARTICLE II. FLOODPLAIN MANAGEMENT REQUIREMENTS

Sec. 6-17. Establishment.

The city elects to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended). The National Flood Insurance Program, established in the aforesaid Act, provided that areas of the city having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This article establishes a flood hazard development permit system and review procedure for development activities in the designated flood hazard areas of the city.

The areas of special flood hazard, zones A, AI - A30, AE, AO, and AH, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study—City of Westbrook, Maine, Cumberland County" dated January 2, 1981, with accompanying "flood insurance rate map" and "flood boundary and floodway map," is hereby adopted by reference and declared to be a part of this article. (Ord. of 7-6-87, § 1)

Sec. 6-18. Definitions.

Unless specifically defined below, words and phrases used in this article shall have the same meaning as they have at common law and to give this article its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

Adjacent grade means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Area of shallow flooding means a designated AO and AH zone on a community's flood insurance rate map (FIRM) with a one-percent or greater annual chance of flooding to an average depth of one to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard means the land in the floodplain having a one-percent or greater chance of flooding in any given year, as specifically identified in the flood insurance study cited in section 6-17 of this article.

Base flood means the flood having a one-percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

Basement means any area of the building having its floor sub-grade (below ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Building. See "structure."

Certificate of compliance means a document signed by the code enforcement officer stating that a structure is in compliance with all of the provisions of this article.

Code enforcement officer means any person or board responsible for performing the inspection, licensing, and enforcement duties required by a particular statute or ordinance.

Development means any change caused by individuals or entities to improved or unimproved real estate, including, but not limited to, the construction of buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation, or drilling operations; and the storage, deposition, or extraction of materials, public or private sewage disposal systems or water supply facilities.

Elevated building means a non-basement building built, in the case of a building in zones A1-30, AE, A, A99, AO, AH, B, C, X, or D, to have the top of the elevated floor, elevated above the ground level by means of pilings, columns, posts, piers, or "stilts;" and adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood. In the case of zones A1-30, AE, A, A99, AO, AH, B, C, X, or D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls less than three (3) feet in height with openings sufficient to facilitate the unimpeded movement of floodwaters.

Elevation certificate. An official form (FEMA Form 81-31, 5/90, as amended) that is used to verify compliance with the flood-plain management regulations of the National Flood Insurance Program and is required as a condition for purchasing flood insurance.

Flood or flooding means:

- (1) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters.
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
- (2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (1) (a) of this definition.

Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood insurance rate map (FIRM) means an official map of a community, on which the administrator of the Federal Insurance Administration has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood insurance study. See "flood elevation study."

Floodplain or flood-prone area means any land area susceptible to being inundated by water from any source (see definition of "flooding").

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including, but not limited to, emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The

term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing means a combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway. See "regulatory floodway."

Floodway encroachment lines means the lines marking the limits of floodways on federal, state, and local floodplain maps.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Historic structure means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior;
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior, or
 - (2) Directly by the Secretary of the Interior in states without approved programs.

Locally established datum means, for purposes of this article, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where mean sea level data is too far from a specific site to be practically used.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements section 6-23(j) of this article.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

Mean sea level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

New construction means structures for which the "start of construction" commenced on or after the effective date of floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

100-year flood. See "base flood."

Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and in Zone A is considered to be the channel of a river or other watercourse and the adjacent land areas to a distance of one-half (1/2) the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Start of construction means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, substantial improvement or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

Substantial improvement means any repair, reconstruction, rehabilitation, addition, or improvement of a structure, the value of which equals or exceeds fifty (50) percent of the market value of the structure either before the improvement or repair is started or, if the structure has

been damaged and is being restored, before the damage occurred. For purposes of this definition "substantial improvement" is considered to occur at the time of the first alteration of any wall, ceiling, floor, or structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- (1) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Variance means a grant of relief by a community from the terms of a floodplain management regulation.

Violation means the failure of a structure or other development to fully comply with a community's floodplain management regulations or ordinance. (Ord. of 7-6-87, § 1; Ord. of 6-21-93)

Sec. 6-19. Flood hazard development permit—Required.

Before any construction or other development (as defined in section 6-18) including the placement of manufactured homes, begins within any areas of special flood hazard established in section 6-17, a flood hazard development permit shall be obtained from the code enforcement officer. This permit shall be in addition to any other building permits which may be required pursuant to the codes and ordinances of the city. (Ord. of 7-6-87, § 1)

Sec. 6-20. Same—Application.

The application for a flood hazard development permit shall be submitted to the code enforcement officer and shall include:

- (a) The name and address of the applicant;
- (b) An address and a map indicating the location of the construction site;
- (c) A site plan showing location of existing and/or proposed structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and the dimensions of the lot;
- (d) A statement of the intended use of the structure;
- (e) A statement as to the type of sewage system proposed;
- (f) Specification of dimensions of the proposed structure;
- (g) The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum in zone A only, of the:
 - (1) Base flood at the proposed site of all new or substantially improved structures, which is determined:
 - a. In zones A1-30, AE, AO, and AH from data contained in the "Flood Insurance Study - City of Westbrook, Maine," as described in section 6-17; or,
 - b. In zone A, to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building;
 - (2) Highest and lowest grades at the site adjacent to the walls of the proposed building;

- (3) Lowest floor, including basement; and whether or not such structures contain a basement; and
- (4) Level, in the case of nonresidential structures only, to which the structure will be floodproofed;
- (h) A description of a base flood elevation reference point established on the site of all new or substantially improved structures;
- (i.) A written certification by a registered state surveyor that the elevations shown on the application are accurate;
- (j) Certification by a registered professional engineer or architect that floodproofing methods for any nonresidential structures will meet the floodproofing criteria of section 6-23;
- (k) A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and
- (l) A statement of construction plans describing in detail how each applicable development standard in section 6-23 will be met. (Ord. of 7-6-87, § 1; Ord. of 6-21-93)

Sec. 6-21. Same—application fee, expert's fee.

A nonrefundable application fee in the amount set forth in the Master Fee Schedule attached hereto as Appendix B, shall be paid to the code enforcement officer.

An additional fee may be charged if the code enforcement officer and/or board of appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within ten (10) days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of this article and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision of the code enforcement officer may appeal that decision to the board of appeals. (Ord. of 7-6-87, § 1)

Sec. 6-22. Same—Review of applications.

The code enforcement officer shall:

- (a) Review all applications for the flood hazard development permit to assure that proposed building sites are reasonably safe from flooding and to determine that all pertinent requirements of section 6-23 (development standards) have, or will be met;
- (b) Utilize, in the review of all flood hazard development permit applications, the base flood data contained in the "Flood Insurance Study—City of Westbrook, Maine," as described in section 6-17. In special flood hazard areas where base flood elevation data are not provided, the code enforcement officer shall obtain, review not provided, the code enforcement officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state or other sources, including information obtained pursuant to sections 6-20, paragraph (g) (1) b.; 6-23, paragraph (j); and 6-25, paragraph (d), in order to administer section 6-23 of this article;
- (c) Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in section 6-17 of this article;

- (d) In the review of flood hazard development permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334;
- (e) Notify adjacent municipalities, the department of environmental protection, and the Maine state planning office prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
- (f) Issue a two-part flood hazard development permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the code enforcement officer with an application for part II of the flood hazard development permit and shall include an elevation certificate completed by a registered state surveyor for compliance with the elevation requirements of section 6-23, paragraphs (f), (g), or (h). Following review of the application, which review shall take place within three (3) working days of receipt of the application, the code enforcement officer shall issue part II of the flood hazard development permit. Part II shall authorize the applicant to complete the construction project; and
- (g) Maintain, as a permanent record, copies of all flood hazard development permits issued and data relevant thereto, including reports of the board of appeals on variances granted under the provisions of section 6-26 of this article and copies of elevation certificates and certificates of compliance required under the provisions of section 6-24 of this article. (Ord. of 7-6-87, § 1)

Sec. 6-23. Development standards.

All developments in areas of special flood hazard shall meet the following applicable standards:

- (a) New construction or substantial improvement of any structure shall:
 - (1) Be designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - (2) Use construction materials that are resistant to flood damage;
 - (3) Use construction methods and practices that will minimize flood damage; and
 - (4) Use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (b) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
- (c) All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of floodwaters into the system and discharges from the systems into floodwaters.
- (d) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

- (e) All development shall be constructed and maintained in such a manner that no reduction occurs in the flood-carrying capacity of any watercourse.
- (f) New construction or substantial improvement of any residential structure located within:
 - (1) Zones A1-30, AE, and AH shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
 - (2) Zones AO and AH shall have adequate drainage paths around structures on slopes, to guide floodwaters away from the proposed structures;
 - (3) Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
 - a. At least one foot higher than the depth specified in feet on the community's flood insurance rate map; or
 - b. At least three (3) feet if no depth number is specified.
 - (4) Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to section 6-20, paragraph (g)(1)b.; section 6-22, paragraph (b); or section 6-25, paragraph (d).
- (g) New construction or substantial improvement of any nonresidential structure located within:
 - (1) Zones A1-30, AE, and AH shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - a. Be floodproofed to at least one foot above the base flood level so that below that elevation the structure is watertight with walls substantially impermeable to passage of water;
 - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
 - c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a flood hazard development permit, as required by section 6-20, paragraph (j) and shall include a record of the elevation above mean sea level of the lowest floor including basement.
 - (2) Zones AO and AH shall have adequate drainage paths around structures on slopes, to guide floodwaters away from the proposed structures.
 - (3) Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
 - a. At least one foot higher than the depth specified in feet on the community's flood insurance rate map; or,
 - b. At least three feet if no depth number is specified; or,

- c. Together with attendant utility and sanitary facilities be floodproofed to meet the elevation requirements of this section and floodproofing standards of section 6-23, paragraph (g) (1).
- (4) Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to sections 6-20, paragraph (g) (1) b.; 6-22, paragraph (b); or 6-25, paragraph (d).
- (h) New or substantially improved manufactured homes located within:
 - (1) Zones A1-30, AE, or AH shall:
 - a. Be elevated on a permanent foundation such that the lowest floor is at least one foot above the base flood elevation; and,
 - b. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 - 1. Over-the-top ties anchored to the ground at the four (4) corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than fifty (50) feet long require one additional tie per side); or by,
 - 2. Frame ties at each corner of the home, plus five (5) additional ties along each side at intermediate points (manufactured homes less than fifty (50) feet long require four (4) additional ties per side).
 - 3. All components of the anchoring system described in section 6-23, paragraphs (h)(1)b. 1. and 2. shall be capable of carrying a force of four thousand eight hundred (4,800) pounds.
 - (2) Zones AO and AH shall have adequate drainage paths around structures on slopes, to guide floodwaters away from the proposed structures.
 - (3) Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
 - a. At least one foot higher than the depth specified in feet on the community's flood insurance rate map; or,
 - b. At least three (3) feet if no depth number is specified; and,
 - c. Meet the requirements of section 5-23, paragraphs (h) (1) a. and b.
 - (4) Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to sections 6-20, paragraph (g)(1)b.; 6-22, paragraph (b); or 6-25, paragraph (d).
- (i) Floodways:
 - (1) In zones A1-30 and AE riverine areas, for which a regulatory floodway is designated on the community's "flood boundary and floodway map," encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not

- result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- (2) In zones A1-30 and AE riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
 - a. Will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
 - b. Is consistent with the technical criteria contained in section 2-7 entitled "Hydraulic Analyses," Flood Insurance Study—Guidelines and Specifications for Study Contractors (FEMA 37/September, 1985, as amended).
 - (3) In zone A riverine areas, in which the regulatory flood-way is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half ($\frac{1}{2}$) the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted unless a technical evaluation certified by a registered professional engineer is provided meeting the requirements of section 6-23, paragraph (i)(2).
 - (j) New construction or substantial improvement of any structure in zones A1-30, AE, AO, AH, and A that meets the development standards of section 6-23, including the elevation requirements of paragraphs (f), (g), or (h) and is elevated on posts, columns, piers, piles, "stilts," or crawlspace less than three (3) feet in height may be enclosed below the elevation requirements provided all the following criteria are met or exceeded:
 - (1) Walls, with the exception of crawlspace less than three (3) feet in height, shall not be part of the structural support of the building;
 - (2) Enclosed areas are not "basements" as defined in section 6-18; and
 - (3) Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either:
 - a. Be certified by a registered professional engineer or architect; or,
 - b. Meet or exceed the following minimum criteria;
 - 1. A minimum of two (2) openings having a total net area of not less than one square inch for every square foot of the enclosed area;
 - 2. The bottom of all openings shall be no higher than one foot above the lowest grade;
 - 3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of floodwaters automatically without any external influence or control such as human intervention, including the use of electrical and other nonautomatic mechanical means; and

- (4) The enclosed area shall not be used for human habitation; and
- (5) The enclosed area may be used for building maintenance, access, parking vehicles, or storing of articles and equipment used for maintenance of the building. (Ord. of 7-6-87, § 1)

Sec. 6-24. Certificate of occupancy.

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a certificate of occupancy is issued by the code enforcement officer subject to the following provisions:

- (a) The applicant shall submit an elevation certificate completed by:
 - (1) A registered state surveyor for compliance with section 6-23, paragraphs (f), (g), or (h), and
 - (2) A registered professional engineer or architect, in the case of floodproofed nonresidential structures, for compliance with section 6-23, paragraph (g).
- (b) The application for a certificate of occupancy shall be submitted by the applicant in writing along with a completed elevation certificate to the code enforcement officer.
- (c) The code enforcement officer shall review the application within three (3) working days of receipt of the application and shall issue a certificate of occupancy, provided the building conforms with the provisions of this article and all other requirements of the city. (Ord. of 7-6-87, § 1)

Sec. 6-25. Review of subdivision and development proposals.

The planning board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law or local ordinances or regulations and all projects on five (5) or more acres or, in the case of manufactured home parks divided into two (2) or more lots, assure that:

- (a) All such proposals are consistent with the need to minimize flood damage.
- (b) All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- (c) Adequate drainage is provided so as to reduce exposure to flood hazards.
- (d) All proposals include base flood elevation and, in a riverine floodplain, floodway data.
- (e) Any proposed development plan shall include a statement that the developer will require that structures on lots in the development be constructed in accordance with section 6-23 of this article and that such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including, but not limited to, a time-share interest. The statement shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed and on any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the planning board or local reviewing authority as part of the approval process. (Ord. No. 7-6-87, § 1)

Sec. 6-26. Appeals and variances.

The board of appeals may, upon written application of an aggrieved party, hear and decide appeals from determinations of the code enforcement officer in the administration of the provisions of this article. The board of appeals may grant a variance from the requirements of this article consistent with state law and the following criteria:

- (a) Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- (b) Variances shall be granted only upon:
 - (1) A showing of good and sufficient cause;
 - (2) A determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or create nuisances, cause fraud or victimization of the public or conflict with existing local laws and ordinances;
 - (3) A showing that the existence of the variance will not cause a conflict with other state, federal or local laws or ordinances; and,
 - (4) A determination that failure to grant the variance would result in "undue hardship," which in this subsection means that:
 - a. The land in question cannot yield a reasonable return unless a variance is granted;
 - b. The need for a variance is due to the unique circumstances of the property and not the general conditions in the neighborhood;
 - c. The granting of a variance will not alter the essential character or the locality; and
 - d. The hardship is not the result of action taken by the applicant or a prior owner.
- (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (d) Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
 - (1) Other criteria of sections 6-26 and 6-23 are met; and,
 - (2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (e) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or a state inventory of historic places, without regard to the procedures set forth in section 6-26, paragraphs (a) through (d).
- (f) Any applicant who meets the criteria of section 6-26, paragraph (a) through (e) shall be notified by the board of appeals in writing over the signature of the chairman that:
 - (1) The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as twenty-five dollars (\$25.00) per one hundred dollars (\$100.00) of insurance coverage;
 - (2) Such construction below the base flood level increases risks to life and property; and
 - (3) The applicant must agree in writing that he is fully aware of all the risks inherent in the use of land subject to flooding; assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the appli-

cant's decision to use land located in a floodplain; and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

- (g) The board of appeals shall submit to the code enforcement officer a report of all variance actions, including justification for the granting of the variance and an authorization for the code enforcement officer to issue a flood hazard development permit, which includes any conditions to be attached to said permit. (Ord. of 7-6-87, § 1)

Sec. 6-27. Enforcement and penalties.

(a) It shall be the duty of the code enforcement officer to enforce the provisions of this article pursuant to 30A M.R.S.A. section 4452.

(b) The penalties contained in 30A M.R.S.A. section 4452 shall apply to any violation of this article.

(c) In addition to any other actions, the code enforcement officer, upon determination that a violation exists, shall submit a declaration to the administrator of the Federal Insurance Administration requesting a denial of flood insurance. The declaration shall consist of:

- (1) The name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
- (2) A clear and unequivocal declaration that the property is in violation of a cited state or local law, regulation, or ordinance;
- (3) A clear statement that the public body making the declaration has authority to do so and a citation to that authority;
- (4) Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
- (5) A clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended. (Ord. of 7-6-87, § 1; Ord. of 6-21-93)

Sec. 6-28. Conflict with other ordinances.

This article shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, by law, permit, or provision of law. Where this article imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this article shall control. (Ord. of 7-6-87, § 1)

Sees. 6-29-6-34. Reserved.

ARTICLE III. SURFACE DRAINAGE

Sec. 6-35. Applications to be reviewed.

Each application for a building permit for new construction or for additions to existing buildings, which involves excavation, filling or regrading of land, shall include appropriate information relative to the topography, existing and proposed grades of the applicant's land and the grade of all abutting streets. Any natural watercourses, ditches or swales, whether water runs constantly or only intermittently, must be identified and shown on plans submitted. If any natural drainage is affected by the proposed construction, the application must show how the applicant

intends to provide adequate drainage to prevent any unnecessary runoff onto abutting properties and/or streets. (Ord. of 5-15-78)

Sec. 6-36. Review of application by building inspector and city engineer.

Prior to the issuance of any building permit, the application for which is covered by section 6-35, the building inspector shall refer the application to the city engineer who shall review same to assure that the proposed construction will not interfere with existing drainage patterns to the detriment of abutting landowners or the city. Any proposed changes in existing drainage patterns must be approved by the city engineer. (Ord. of 5-15-78)

Sec. 6-37. Approval subject to certain conditions.

Applications for building permits covered by section 6-35 may be approved subject to such reasonable conditions as the building inspector deems necessary to assure compliance with the intents and purposes of this article and to assure that such construction does not create surface drainage problems. (Ord. of 5-15-78)

Sec. 6-38. Appeal.

Applicants for building permits subject to this article may appeal from the decisions of the building inspector and/or the city engineer to the zoning board of appeals. Such appeal shall be in writing and submitted to the city clerk within thirty (30) days from the date of the decision appealed from. (Ord. of 5-15-78; Ord. of 8-24-81)

Sec. 6-39. Liability.

The city and its agents assume no liability for any damages, costs or claims arising from the granting of any permit subject to this article nor does it accept responsibility for any surface water problems which may result from any construction pursuant to such permits. (Ord. of 5-15-78)

Chapter 7

CEMETERIES

Art. I. [Parks and Cemeteries Department](#), §§ 7-1 – 7-15

Art. II. [Woodlawn](#), §§ 7-16 – 7-52

Art. IV. [Saccarappa](#), § 7-53 – 7-63

Art. IV. [Highland Lake](#), § 7-64

ARTICLE I. PARKS AND CEMETERIES DEPARTMENT

Sec. 7-1. Director of parks and cemeteries; appointment; removal.

The director of parks and cemeteries shall be appointed by the mayor, with approval by a majority of all the members of the city council. He or she may be removed on complaint of the mayor, sustained by a majority vote of all the members of the city council. (Ord. of 8-5-91)

Sec. 7-2. Residency required.

The director of parks and cemeteries within a reasonable time of his appointment, shall become an inhabitant of the city and shall maintain his residency within the city as a condition of employment. (Ord. of 8-5-91)

Sec. 7-3. Duties generally.

The director of parks and cemeteries, acting under the instructions and supervision of the mayor, and with the advise of the board of cemetery trustees where appropriate, shall:

- (a) Plan, direct, and manage all the functions of the city's parks and cemeteries department, and supervise all its personnel who shall be responsible to him in the performance of their respective duties.
- (b) Supervise the maintenance of city grounds, parklands, and recreational facilities.
- (c) Direct the maintenance of all the publicly-owned or maintained cemeteries and burial grounds within the city; arrange and supervise all interments therein; and account for all monies received from the sale of lots, burial charges, and payments for lot care.
- (d) Maintain and keep safe records, plans, surveys, and accounts, entering therein, among other entries, the location and ownership of all cemetery lots, the particulars of each interment; the dates and extent of all maintenance and repairs; and statements of all expenditures and payments received.
- (e) Perform such other duties relative to the operation and supervision of the parks and cemeteries department as the mayor or the council may from time to time direct.
- (f) Prepare and present to the mayor at his request periodic reports of the activities of the department, and assist in the preparation of a proposed annual budget for the operation of the department.

(Ord. of 8-5-91)

Secs. 7-4 – 7-15. Reserved.

ARTICLE II. WOODLAWN¹

Sec. 7-16. Established; subject to regulation.

The tract of land situated on the northeasterly side of Stroudwater Street, purchased by the Town of Westbrook from Jonathan M. Knapp, in September, 1885, is hereby set apart and appropriated for the burial of the dead, under the name of Woodlawn Cemetery, and such lands adjacent thereto as the town or city has or may acquire to extend its limits shall be included in and subject to all the ordinances or regulations made for the government and control of Woodlawn Cemetery. (1942 Rev. Code, Ch. XXIV, § 1)

Sec. 7-17. Council to manage cemetery; authority to delegate control.

The direct control and management of Woodlawn Cemetery and the other municipally-maintained burial grounds shall be vested in the city council, which may exercise this power through the director of parks and cemeteries, with the advice of the cemeteries board of trustees, who shall have no authority other than granted by said council or the provisions of this chapter. (1942 Rev. Code, Ch. XXIV, § 2; Ord. of 8-5-91)

Sec. 7-18. Appointment of board members; vacancies.

The first board of trustees of Woodlawn Cemetery shall be appointed by the mayor as soon as may be after the organization of the city government for the ensuing year, one (1) to hold office for one (1) year, one (1) for two (2) years, and the third for three (3) years. Thereafter, the mayor shall appoint one (1) trustee in place of the one whose term of office expires, to hold such office for a term of three (3) years, unless sooner removed, and until his successor is appointed and qualified.

All vacancies in the board by death, resignation or otherwise shall be filled by the mayor by appointment for the remainder of the term. (1942 Rev. Code, Ch. XXIV, § 2; Ord. of 8-5-91)

Sec. 7-19. Board to select officers.

The board of trustees of Woodlawn Cemetery shall annually organize by choosing a chairman to preside at their meetings and a secretary to keep a record of the business of the board and to conduct its correspondence, both to be chosen from the members of the board. (1942 Rev. Code, Ch. XXIV, § 3; Ord. of 8-5-91)

Sec. 7-20. Duties of the board of trustees.

The board of trustees shall annually make out and present to the council a statement of the general condition and affairs of the cemetery, such statement shall contain an estimate of all property belonging to the city and under their charge, including lots made up and not sold, land not made into lots, tools, etc., such statement shall be presented to the council not later than the last day of January annually. (1942 Rev. Code, Ch. XXIV, § 4; Ord. of 8-5-91)

Sec. 7-21. Director to keep burial records; contents.

The parks and cemeteries director shall keep a record of all burials made in the cemetery in a book to be kept by them for the benefit of the cemetery, such record shall contain the name, age, residence and nature of the disease of which such person died, and of the section, number and name of the lot holder upon whose lot such burial is made. (1942 Rev. Code, Ch. XXIV, § 13; Ord. of 8-5-91)

¹ State law reference – Cemetery corporations, 13 M.R.S.A. §§ 1031-1386.

Sec. 7-22. Misuse of funds, personal interest in contracts by trustees, director prohibited.

No trustee of the board of parks and cemeteries shall be personally interested in any contract for labor or materials used in the cemetery.

A trustee or superintendent who shall violate this section or who shall receive, retain or appropriate to his own use funds of any description belonging to the cemetery shall be subject to immediate removal from office by the mayor. (1942 Rev. Code, Ch. XXIV, § 14; Ord. of 8-5-91)

Sec. 7-23. Director to lay out lots; setting prices.

The parks and cemeteries director shall cause the cemetery to be laid out into lots with convenient paths and avenues, and he, together with the board of trustees, shall recommend to the city council the appropriate price for the sale of such lots, said sums to include the cost of perpetual care by the city. (1942 Rev. Code, Ch. XXIV, § 15; Ord. of 8-5-91)

Sec. 7-24. Director to file certificate upon sale of lot.

Immediately upon the sale of a lot in the Woodlawn Cemetery, the parks and cemeteries director shall give a certificate to the city treasurer setting forth the name of the person with the number and section of the lot and the price. (1942 Rev. Code, Ch. XXIV, § 5; Ord. of 8-5-91)

Sec. 7-25. Issuance of certificate after payment; form of certificate.

Upon the full payment for a lot in Woodlawn Cemetery the treasurer shall deliver to the buyer a certificate substantially as follows:

CITY OF WESTBROOK

Be it known that the City of Westbrook, in consideration of _____ dollars, paid by _____ hereby gives and grants to said _____ heirs and assigns forever, the right to occupy for the purpose of burial, lot No. _____, section _____, in Woodlawn Cemetery in said City, being the lot described in the plan of the Cemetery on file in the office of the City Treasurer. This right is granted, and is to be held and enjoyed, subject to all such general regulations as may be adopted by the City for the care and management of the cemetery and the due observance of order therein, and the same shall not be assigned or transferred without the consent of the parks and cemeteries director endorsed thereon.

In witness whereof, this instrument is subscribed by its treasurer in behalf of said City, this ____ day of _____ A.D. (1942 Rev. Code, Ch. XXIV, § 5; Ord. of 8-5-91)

Sec. 7-26. Additional charge when selling, transferring to nonresident.

On selling or transferring lots to nonresidents of the city, the parks and cemeteries director shall charge an additional fee over and above the cost to a resident of this city, as set forth in the Master Fee Schedule attached hereto as Appendix B. (1942 Rev. Code, Ch. XXIV, Sec. 5; Ord. of 8-18-80; Ord. of 8-5-91)

Sec. 7-27. Price to include perpetual care.

The price of all lots in Woodlawn Cemetery shall include perpetual care of the same; perpetual care being the caring for the grass and keeping the same in good condition and properly cut. (1942 Rev. Code, Ch. XXIV, § 9; Ord. of 8-5-91)

Sec. 7-28. Perpetual care for lots sold before May of 1896; bond to secure care.

(a) All lots sold previous to May 20, 1896, shall receive perpetual care as described in the preceding section upon payment to the city of such price as shall be agreed upon by and between the city and the owners of such lots or their heirs or legal representatives.

The city is authorized to fix upon any lot such price for any perpetual care as in their judgment would be just and proper between the city and applicants for the same.

(b) Upon the receipt of a certificate from the parks and cemeteries director setting forth the section, number and lot holder's name and residence, together with the care agreed upon and price of same, the treasurer shall, upon the payment of the price agreed upon in the certificate, issue to the party therein named a bond in the name and behalf of the city to secure such perpetual care, the penal sum in such bond to be double the price paid for such care. (1942 Rev. Code, Ch. XXIV, § 9; Ord. of 8-5-91)

Sec. 7-29. Fund established, purpose; authority to loan.

The city council may authorize the creation of such trust accounts as are necessary for the purpose of the maintenance, care and improvement of the Woodlawn Cemetery. All funds dedicated for the maintenance, care and improvement of cemeteries shall be deposited in such trust accounts. The funds authorized by this section shall be under the care and custody of the treasurer, and such portion of the same as may not be needed for immediate use may be loaned to the city on interest. (1942 Rev. Code, Ch. XXIV, § 7; Ord. of 8-5-91)

Sec. 7-30. Treasurer to keep records, open account.

The treasurer shall keep a record in which shall be entered all lots, agreeable to the plan of Woodlawn Cemetery, with their number and section, and with columns ruled for the names of purchasers of each lot, the price, date of sale and date of payment.

He shall also open a cemetery account in a book kept for that purpose, in which shall be entered all monies received on account of the cemetery. (1942 Rev. Code, Ch. XXIV, § 7; Ord. of 8-5-91)

Sec. 7-31. Treasurer's annual report.

The city treasurer shall, in his regular annual report, submit a detailed statement of all receipts and expenditures for the past year, as shown by such cemetery account required by the preceding section. (1942 Rev. Code, Ch. XXIV, § 7; Ord. of 8-5-91)

Sec. 7-32. Funeral directors to provide information prior to delivery for burial.

It shall be the duty of the funeral director, who shall remove any body to Woodlawn Cemetery, to present a municipal burial/transit permit to the parks and cemeteries director prior to the burial. (1942 Rev. Code, Ch. XXIV, § 13; Ord. of 8-5-91)

Sec. 7-33. Permission of lot holder prior to burial.

No interment in Woodlawn Cemetery shall be made without the permission of the recorded holder of the lot, his successor or his legal representative. (1942 Rev. Code, Ch. XXIV, § 8; Ord. of 8-5-91)

Sec. 7-34. Burials upon lots held by city.

Burials are prohibited on any lot where the right of occupancy is held by the city, however, the parks and cemeteries director, upon receipt of an executed sales contract, may allow such burials to be made. (1942 Rev. Code, Ch. XXIV, § 8; Ord. of 8-5-91)

Sec. 7-35. Paupers' graves; rebate upon removal.

The parks and cemeteries director is authorized to set apart a plot of land in the cemetery to be kept in good condition for graves for city residents who are unable to purchase standard priced lots. (1942 Rev. Code, Ch. XXIV, § 8; Ord. of 8-5-91)

Sec. 7-36. Director to direct landscaping.

All grading of lots and the setting out and or removal of trees, shrubs or hedges in Woodlawn Cemetery shall be under the direction of the director. The cost of maintenance for shrubs, hedges and similar plantings as allowed by the director on individually owned lots shall be the responsibility of the owner of such lots. (1942 Rev. Code, Ch. XXIV, § 11; Ord. of 8-5-91)

Sec. 7-37. Position of stones, monuments regulated; expense of repositioning.

Whenever in the judgment of the director of Woodlawn Cemetery any stone or monument shall need to be straightened, the owner of such stone or monument shall be notified, and if the same is not attended to within a reasonable time to be prescribed by the director, the director may cause such work to be done at the expense of such owner. (1942 Rev. Code, Ch. XXIV, § 10; Ord. of 8-5-91)

Sec. 7-38. Construction of foundations regulated.

No foundation for any stone, tablet or monument, shall be laid in Woodlawn Cemetery except by the city. Provided, however, the city may authorize the construction of such foundation by other parties if done under the supervision of the director. (1942 Rev. Code, Ch. XXIV, § 12; Ord. of 8-5-91)

Secs. 7-39 - 7-52. Reserved.

ARTICLE III. SACCARAPPA

Sec. 7-53. Council to manage cemetery; authority to delegate control.

The direct control and management of Saccarappa Cemetery shall be vested in the city council, which may exercise this authority through the director of parks and cemeteries, with the advice of the board of trustees, and the control, care and management of said cemetery shall be subject to all the ordinances and regulations which apply to Woodlawn Cemetery. (1942 Rev. Code, Ch. XXVI, § 1; Ord. of 8-5-91)

Secs. 7-54-7-63. Reserved.

ARTICLE IV. HIGHLAND LAKE

Sec. 7-64. Council to manage cemetery; authority to delegate control.

The direct control and management of Highland Lake Cemetery shall be vested in the city council, which may exercise this authority through the director of parks and cemeteries, with the advice of the board of trustees, and the control, care and management of said cemetery shall be subject to all the ordinances and regulations which apply to Woodlawn Cemetery. (1942 Rev. Code, Ch. XXVI-A, § 1; Ord. of 8-5-91)

Chapter 8

CITIZENS INITIATIVE AND REFERENDUM ORDINANCE¹

Sec. 8 -1. Title and purpose of chapter.

This chapter shall be known and cited as the "Citizens Initiative and Referendum Ordinance." The submission to the vote of the citizens of any proposed ordinance dealing with legislative matters on municipal affairs or any such ordinance enacted by the city council may be accomplished by the presentation of a petition therefor to the city council in the manner as hereinafter provided. However, the provisions of this chapter shall not apply to any administrative matters directly relating to the fiscal affairs of the city or tax levy of the city or any ordinance relative to such matters. (Ord. of 10-30-75)

Sec. 8 -2. Petition for initiative or referendum.

Any five (5) or more qualified voters of the city may originate a petition for either an initiative or referendum election by signing such petition at the office of the city clerk. The originators of said petition shall be known as the petitioner's committee and qualified as the circulators thereof.

Whenever requested by said five (5) or more voters, the city clerk shall prepare the proper petition, with a copy of their submitted proposal or ordinance thereon or attached thereto, and upon it being signed by said voters, the city clerk shall file said petition with the date thereon and shall, during office hours for thirty (30) business days thereafter, keep the same open for signature by other qualified voters of the city. Such petitions may then be circulated and endorsed only by those persons who have signed the original petition and they shall attest that said petition was signed in their presence.

(c) At the expiration of said thirty-day period the city clerk shall declare the petition closed and shall, at the next meeting of the city council, present the said petition to the city council with verification of the number of valid voter signatures attached thereto. (Ord. of 10-30-75)

Sec. 8-3. Number of signatures required; public hearing and validity.

If the number of valid signatures to said petition shall amount to at least ten (10) per cent of the number of registered voters as of the date of the last preceding regular municipal election, as certified by the board of registration, the city council shall set a date for a public hearing to be held within twenty-one (21) days thereafter.

At the next council meeting after such public hearing the city council shall upon finding the petition to be valid for initiative or referendum take the necessary steps to submit to the voters of the city the ordinance or matter proposed by said petition; provided, however, that in the case of the referendum, the entire repeal by the city council of the ordinance sought to be referred, and in the case of the initiative, the passage by the city council of the desired ordinance shall put an end to all proceedings under said petition.

Any determination as to the insufficiency of a petition by the city council shall be subject to court review. (Ord. No. 10-30-75)

Sec. 8-4. Form for petition.

¹ **Charter reference** – Establishment of initiative and referendum procedure, § 8.

The petition used to originate the initiative or the referendum shall be substantially in the following form:

Petition to the City Council
Initiative or Referendum

For the Submission to the People of the Question

Shall the proposed ordinance or matter, a copy of which is set forth herein or attached hereto be adopted?

We, the undersigned, under oath, depose, and say: That we are duly qualified voters of the City of Westbrook residing respectively at the addresses placed opposite our names, and we hereby petition the City Council to submit the foregoing questions to the voters of the City of Westbrook.

| Names | Residence | Date |
|-------|-----------|-------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

I, _____ the City Clerk of the City of Westbrook do solemnly affirm that the signatures appended hereto are the signatures of the persons whose names they purport to be, to the best of my knowledge, information, and belief.

| | |
|-------|------------|
| _____ | _____ |
| Date | City Clerk |

Copies of said petition may then be circulated and all such copies when filed shall contain or have attached thereto the following affidavit executed by the circulator thereof:

Affidavit of Circulator

I, the undersigned, _____ being the Circulator of this petition upon my oath do solemnly affirm that I personally circulated this petition, that all signatures which total _____ in number were affixed in my presence and that I believe them to be the signatures of the persons whose names they purport to be.

| | |
|-------|-------------------------|
| _____ | _____ |
| Date: | Signature of Circulator |

Subscribed to upon oath before me on this _____ day of _____.

Within ten (10) days after the first city council meeting held after the public hearing the municipal officers shall set a time for the holding of a special election at which the proposed initiative or referendum question shall be submitted to the voters of the city, which special election shall be held not less than thirty (30) nor more than sixty (60) days after said council meeting; provided that, if the date set for said special election shall fall within four (4) months of the next regular state or municipal election, no such special election shall be called and the question shall be submitted at said regular election. (Ord. of 10-30-75)

Whenever any ordinance is required by the provisions of this chapter to be submitted to the voters for adoption or repeal, the city council shall order the publication of the complete text thereof to be made in one or more newspapers of general circulation throughout the city, such publication to be made not less than five (5) days nor more than fifteen (15) days prior to the election. (Ord. of 10-30-75)

The special ballots used for voting in said election shall set forth the title of such ordinance or other matter to be voted upon, together with two (2) brief explanatory statements of not more than one hundred (100) words each, one prepared by the city council and the other prepared by the petitioners. These statements shall be descriptive of the intent of the proposed ordinance or matter to be voted upon. The ballot shall in substance also contain the words:

Shall the Ordinance entitled " _____ " (or proposal) be repealed. Yes No
☐ ☐

(Ord. of 10-30-75)

If a majority of the qualified voters voting on said proposed or referred ordinance or matter shall vote in favor thereof, it shall take effect upon the declaration of the result of such election after the official canvass of the return of the votes by the municipal officers; provided the total number of votes cast for and against the questions equals or exceeds thirty (30) per cent of the total votes cast in the city at the last prior gubernatorial election. (Ord. of 10-30-75)

In the event that two (2) or more ordinances are submitted at the same election, they shall be placed upon the ballot in order of the priority of the filing of the respective petitions and shall be given precedence upon the ballot over any and all questions submitted by the city council on its own initiative.

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provisions, the ordinance receiving the highest number of votes at such election shall be paramount and all questions of construction shall be determined accordingly. (Ord. of 10-30-75)

Sec. 8-10. City council proposals.

The city council may submit, on its own initiative, a proposition for the enactment, repeal, or amendment of any ordinance (except as herein otherwise provided) to be voted upon at any regular or special municipal election and should such proposition receive a majority of the votes cast thereon at any election, such ordinance shall be enacted, repealed, or amended accordingly, in accordance with the provisions of section 6¹/₄-9. However, the council may also submit advisory questions on any municipal matters to the voters if it so desires. (Ord. of 10-30-75)

Sec. 8-11. Repeal or amendment of enacted ordinance.

An ordinance enacted by a vote of the people at an initiative or referendum election shall not be repealed or amended for a period of five (5) years from the effective date of the ordinance, except by a vote of the people, unless such ordinance shall otherwise expressly provide. After five (5) years from the effective date of the ordinance, the city council after a public hearing may repeal or amend such ordinance by vote of two-thirds (2/3) of its members. (Ord. of 10-30-75)

Sec. 8-12. Notice of public hearing.

Whenever a public hearing is required to be held in accordance with the provisions of this chapter, notice of the time, place, and purpose of said hearing shall be published as required by section 8-7. (Ord. of 10-30-75)

Sec. 8-13. Referendum for adoption of this chapter.

(a) This chapter shall be submitted to the voters for approval or rejection by a majority vote of the electors of said city, and any subsequent amendments or revisions of this ordinance shall require the same ratification by the voters as required by Section 8 of the city charter.

(b) For the purpose of said election, the city clerk shall reduce the subject matter to the following question: "Shall the ordinance entitled 'Citizens Initiative and Referendum Ordinance' as passed by the City Council, be approved?" The voters shall indicate by a cross or check mark placed within the square on their ballots, under the word "yes" or "no" the opinion of same, and if this chapter is approved by the voters it shall take effect for all its purposes upon the declaration of the result of such election after the official canvas of the return of votes by the municipal officers. (Ord. of 10-30-75)

CHAPTER 9

EMERGENCY MANAGEMENT

Sec.9-1 . Purpose.

It is the intent and purpose of this article to establish An emergency management agency in compliance and in conformity with the provisions of Title 37-B, M.R.S.A., Section 781 et seq., to ensure the complete and efficient utilization of the city's facilities and resources to prevent, prepare for and respond to all hazards, natural and manmade, that may occur in the City of Westbrook and the surrounding region.

The Emergency Management Agency of the City of Westbrook will be the coordinating Agency for all activities involving the response to all hazards, natural and man made

Sec. 9-2 Definitions.

The following definitions shall apply in the interpretation of this article:

Agency. "Agency" shall mean the emergency management agency as established by this article.

Disaster. "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from any natural or man-made cause including, but not limited to, fire, flood, earthquake, wind, storm, oil spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, critical material shortage, infestation, explosion or riot.

Emergency Management. "Emergency Management" means the City of Westbrook, Code of Ordinances, Chapter 9 preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to minimize and repair injury and damage resulting from disasters or catastrophes caused by enemy attacks, sabotage, riots, terrorism or other hostile action, or by fire, flood, earthquake or other natural or man-made causes. These functions include, without limitation, firefighting, police, medical and health, emergency welfare, rescue, engineering, and communications services; evacuation of persons from stricken areas; allocation of critical materials in short supply; emergency transportation; other activities related to civilian protection and other activities necessary to the preparation for the carrying out of these functions.

Emergency Preparedness Forces. "Emergency preparedness forces" shall mean the employees, equipment and facilities of all city departments, boards, institutions and commissions; and in addition, it shall include all volunteer persons, equipment and facilities contributed by or obtained from volunteer persons or agencies.

Fire Chief. "Fire Chief" means the Fire Chief of the City of Westbrook

(a) The Mayor shall be responsible for the bureau's organization, administration and operation. The Mayor may employ such permanent or temporary employees as he/she deems necessary and prescribe their duties.

(b) The City Council shall periodically review the existing operational organization to ascertain the agency's ability to cope with its responsibilities and shall approve the city's emergency preparedness plan.

Sec. 9-3. Appointment of Fire Chief; duties and responsibilities

The Mayor shall appoint the Fire Chief as Director of the Agency, who shall coordinate the activities of all city departments, organizations and agencies for emergency preparedness within the city and maintain a liaison with other emergency preparedness agencies, public safety agencies, and have such additional duties as prescribed by the Mayor

The Fire Chief shall prepare, under the direction of the Mayor, such policies as may be deemed necessary for the administration and operational requirements of the bureau, which policies must be approved by the City Council prior to becoming effective.

Sec. 9-4. Emergency proclamation.

(a) The Mayor shall have the power and authority, after consultation with the available City Council members, to issue a proclamation that an emergency exists whenever a disaster or civil emergency exists or appears imminent. The proclamation may declare that an emergency exists in any or all sections of the city. If the Mayor is temporarily absent from the City or otherwise unavailable, the Council President may issue the proclamation that an emergency exists. If neither the Mayor nor the Council President are available, then the following persons shall have the power and authority to issue a proclamation that an emergency exists, in the following order of succession: the City Administrator, the Fire Chief; the EMA Director if he is unavailable, the Chief of Police; if he is unavailable, the Director of Public Services. A copy of such proclamation shall be filed within twenty-four (24) hours in the office of the City Clerk.

(b) Notwithstanding the above, when consultation with the Mayor or President of the City Council would result in a substantial delay in an effective response in alleviating or preventing an emergency or disaster, the City Administrator is authorized to take whatever actions are necessary to prevent the loss of life and property in the City.

(c) The City Administrator and the Fire Chief shall be responsible for submitting a full report to the City Council of all actions taken as a result of the declared emergency as soon as the City Council can be convened.

Sec. 9-5. Termination of emergency.

(a) When the Mayor or his/her designee is satisfied that a disaster or civil emergency no longer exists, he/she shall terminate the emergency proclamation by another proclamation affecting the sections of the city covered by the original proclamation, or any part thereof. Said termination of emergency shall be filed in the office of the City Clerk.

(b) No state of emergency may continue for longer than five (5) days unless renewed by the City Council.

Sec. 9-6 . Mayor's duties and emergency powers.

(a) During any period when an emergency or disaster exists or appears imminent, the Mayor or his/her designee may promulgate such regulations as he/she deems necessary, and consistent with the purposes of this article, to protect life and property and to preserve critical resources. Such regulations may include, but are not limited to, the following:

(1) Regulations prohibiting or restricting the movement of vehicles in areas within or without the city;

(2) Regulations facilitating or restricting the movement of persons within the city;

(3) Regulations pertaining to the movement of persons from hazardous areas within the city;

(4) Such other regulations necessary to preserve public peace, health and safety.

Nothing in this section shall be construed to limit the authority or responsibility of any department to proceed under powers and authority granted to them by state statute, city ordinance or the charter of the city.

(5) The emergency recall of any or all City of Westbrook employees, he/she deems essential to the successful mitigation of the incident.

(b) The Mayor or his/her designee may order the evacuation of persons from hazardous areas within the city.

(c) The Mayor or his/her designee shall be authorized to request aid or assistance from the state or any political subdivision of the state and shall render assistance to other political subdivisions under the provisions of Title 37-B, M.R.S.A.

(d) The Mayor or his/her designee may obtain vital supplies, equipment and other items found lacking and needed for the protection of health, life and property.

(e) The provisions of this section will terminate at the end of the declared emergency.

Sec. 9-7. Emergency operational plans.

The Fire Chief shall prepare an emergency operational plan for the city, which shall be submitted to the Mayor and City Council for approval. The emergency plan shall reflect the use of the National Incident Management System (NIMS) as its primary command and control system for all city, county, state and federal agencies. It shall be the responsibility of all municipal departments and agencies to perform the functions assigned and to maintain their portions of the plan in a current state of readiness. The city plan shall be reviewed periodically by the Mayor and City Administrator in conjunction with all city department heads and the Fire Chief.

Sec. 9-8 . Immunity from liability.

All members of emergency preparedness forces, while engaged in emergency preparedness activities, shall be immune from liability, as set forth in Title 37-B, Section M.R.S.A. § 822.

Sec. 9-9. Compensation for injuries.

All members of emergency preparedness forces shall be deemed to be employees of the state when engaged in training or on duty and shall have all of the rights of state employees under the Workmen's Compensation Act, as set forth in Title 37-B, M.R.S.A. § 823.

Sec. 9-10 . Violation of Regulations

It shall be unlawful for any person to violate any provisions of this article or of the regulations or plans issued pursuant to the authority contained herein, or to obstruct, hinder or delay any member of the emergency Management Agency as herein defined in the enforcement of the provisions of this article or any regulation or plan issued thereunder.

Sec. 9-11. Penalty.

Any person, firm or corporation violating any provision of this article or any rule or regulation promulgated there under, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500.00) and the costs of prosecution.

Sec. 9-12 . Severability.

Should any provision of this article be declared invalid for any reason, such declaration shall not affect the validity of other provisions, or of this article as a whole, it being the legislative intent that the provisions of this article shall be severable

Sec.9-13 . Conflicting ordinances, orders, rules and regulations suspended.

At all times when the orders, rules and regulations made and promulgated pursuant to this article shall be in effect, they shall supersede all existing ordinances, orders, rules and regulations, insofar as the latter may be inconsistent herewith.

Chapter 10

ELECTIONS¹

Sec. 10-1. Wards described.

The division of the city into wards according to the provisions of the charter shall be as follows:

Ward 1

That area south and west of the following line: Beginning at the Westbrook-Portland boundary line and its intersection with the Presumpscot River; then along the Presumpscot River to a point southeasterly of the end of Declaration Drive; then northwesterly on Declaration Drive to Constitution Drive; then northeasterly and northwesterly on Constitution Drive to East Bridge Street; then westerly on East Bridge Street to Austin Street; then north on Austin Street to the point where Dolly Brook/Mill Brook crosses (southeasterly of Pride Street); then southwesterly along Dolly Brook to its intersection with Mill Brook; then northwesterly along Mill Brook to MBL 020*000*019; then northwesterly along the southern property line to Methodist Road at a point south of Country Lane; and

That area south and east of the following line: Beginning on Methodist Road at a point south of Country Lane; then southerly along Methodist Road and Bridge Street to Cumberland Street; then southeasterly Cumberland Street to Presumpscot River; then southwesterly along Presumpscot River to the Maine Central Railroad tracks; then easterly along Railroad tracks across Main Street to Rochester Street; then southeasterly on Rochester Street Forest Street; then southwesterly on Forest Street and Woodlawn Avenue to Stroudwater Street; then easterly on Stroudwater Street to the Westbrook-Portland boundary line.

Ward 2

That area south and west of the following line: Beginning at the Westbrook-Portland boundary line and its intersection with Stroudwater Street; then northwesterly on Stroudwater Street to Woodlawn Avenue and Forest Street; then northeasterly on Woodlawn Avenue and Forest Street to Rochester Street; then northwesterly on Rochester Street across Main Street to the Maine Central Railroad crossing; then westerly on the Maine Central Railroad tracks to the railroad bridge on the Presumpscot River; and

That area south and west of the following line: Beginning at the Maine Central Railroad bridge on the Presumpscot River; then westerly along the river to Bridge Street; then south on Bridge Street to Main Street; then easterly on Main Street to Church Street; then southerly on Church Street to Cross Street; then westerly on Cross Street to Brackett Street; then southerly on Brackett Street to Prospect Street; then westerly on Prospect Street to Central Street; then southerly on Central Street to the Stroudwater River; then along the Stroudwater River to Saco Street; then southerly on Saco Street to the Westbrook-Scarborough boundary line.

Ward 3

That area south and west of the following line: Beginning at the Westbrook-Gorham boundary line and its intersection with Presumpscot River; then southeasterly along Presumpscot River to Bridge Street; then southerly on Bridge Street to Main Street; then easterly on Main

¹ **State law reference** – Elections generally, see 21-A M.R.S.A. § 1 et seq.; **Charter reference** – City to be divided into wards, authority to review and change wards, § 3.

Street to Church Street; then southerly on Church Street to Cross Street; then westerly on Cross Street to Brackett Street; then southerly on Brackett Street to Prospect Street; then westerly on Prospect Street to Central Street; then southerly on Central Street to the Stroudwater River; and

That area north and west of the following line: Beginning at the intersection of Central Street and the Stroudwater River; then westerly on the Stroudwater River to Saco Street; then southerly on Saco Street to the Westbrook-Scarborough boundary line.

Ward 4

That area southeast of the following line: Beginning at the Westbrook-Windham boundary line and its intersection with the north property line of MBL 017*000*010; then northeasterly to Methodist Road at a point south of Country Lane; and

That area southwest of the following line: Beginning on Methodist Road at a point south of Country Lane; then southerly on Methodist Road and Bridge Street to Cumberland Street; then easterly on Cumberland Street to the Presumpscot River; and

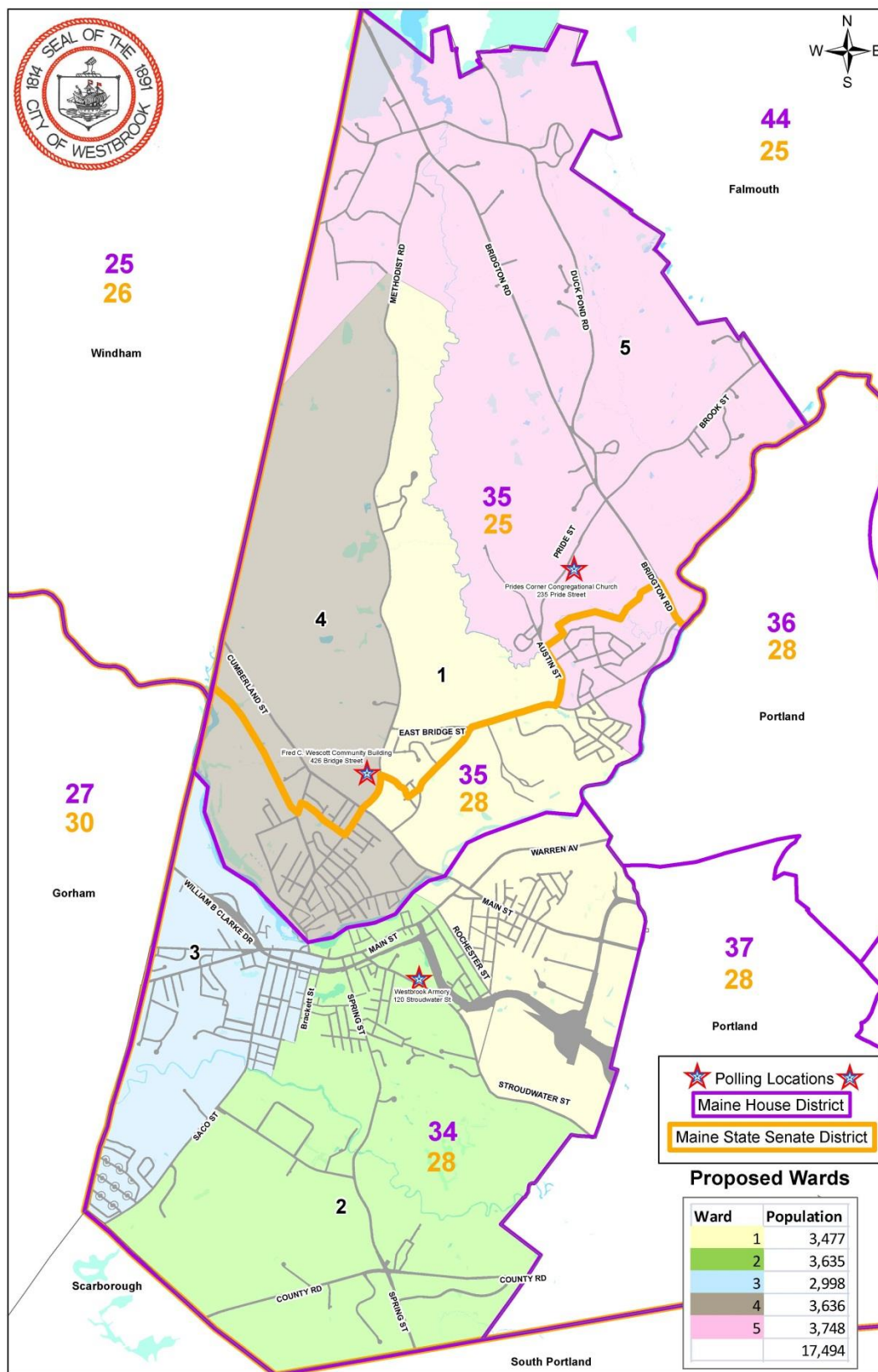
That area north and west of the following line: Beginning at Cumberland Street and the intersection with Presumpscot River; then westerly along Presumpscot River to the Westbrook-Gorham boundary line.

Ward 5

That area north and west of the following line: Beginning at the Westbrook-Windham boundary line and its intersection with the north property line of MBL 017*000*010; then northeasterly to a point south of Country Lane; then southeast to the southern property line of MBL 020*000*019 to its intersection with Mill Brook; then southeasterly along Mill Brook to Austin Street; then southeasterly on Austin Street to East Bridge Street; and

That area south and east of the following line: Beginning at the intersection of Austin Street and East Bridge Street; then southwesterly on East Bridge Street to Halidon Road; and

That area north and east of the following line: Beginning at the intersection of East Bridge Street and Constitution Drive; then southeasterly and southwesterly on Constitution Drive to Declaration Drive; then southeasterly to the Presumpscot River; then northeasterly along the Presumpscot River to the Westbrook-Portland boundary line.



(Ord. of 8-2-71; Ord. of 3-21-94; Ord. of 4-7-14)

Sec. 10-2. Nomination to city office.

Pursuant to the provisions of 30-A M.R.S.A. Sec. 2527 and Sec. 5 of the City Charter, the nomination of persons for city offices shall be conducted in accordance with the provisions of 30-A M.R.S.A. Sec. 2528(4), as amended. (Ord. of 8-16-93)

Sec. 10-3. Form of warrant for calling ward meetings.

The clerk shall prepare ballots, at the city's expense, according to the following provisions.

- (a) The ballot shall contain the names of properly nominated candidates arranged under the proper office designation in alphabetical order by last name. It may contain no other names.
- (b) At the end of the list of candidates for each office, there must be left as many blank spaces as there are vacancies to be filled in which a voter may write in the name and, if residence in the municipality is not a requirement to hold office, municipality of residence of any person for whom the voter desires to vote. A sticker may not be used to vote for a write-in candidate in any municipal election other than a primary election.
- (c) A square shall be printed at the left of the name of each candidate so that a voter may designate the voter's choice clearly by a cross mark (X) or a check mark (✓). If tabulating machines are used then the requirements of M.R.S.A. 21-A shall apply.
- (d) Words of explanation such as "Vote for one" may be printed on the ballot.
- (e) A sufficient number of ballots shall be printed, photocopied or otherwise mechanically reproduced and furnished, and a record of the number shall be kept by the clerk. The printed ballots shall be packaged in convenient blocks so that they may be removed separately.
- (f) Ten or more specimen ballots printed on paper of a distinctive color without the endorsement of the clerk shall be provided.
- (g) The ballots and specimen ballots shall be packed in sealed packages with marks on the outside specifying the number of each enclosed.
- (h) At least four (4) days before the election, the clerk shall have posted in one or more conspicuous, public places a specimen ballot or a list, substantially in the form of a ballot, containing the name and office designation of each candidate. The clerk shall post five (5) specimen ballots in the voting room outside the guardrail enclosure.
- (i) The absentee ballot requirements of M.R.S.A. 21-A, section 752, apply, provided that the words "Absentee Ballot" are printed conspicuously on both sides of the folded ballot.¹

(1942 Rev. Code, Ch. XXI, § 1; Ord. of 8-16-93)

Sec. 10-4. Warrants required; form and posting.²

Municipal Elections shall be called by a warrant. The form of the warrant shall meet the following requirements:

- (1) *Time and place.* It shall specify the time and place of the election.

¹ State law reference – 30-A M.R.S.A. §§ 2528, 2529, and 2554.

² State law reference – 30-A M.R.S.A. §§ 2523, and 2551.

- (2) *Business to be acted upon.* It shall state in distinct articles the items to be voted upon at the election. No other business may be acted upon.
- (3) *Notification.* It shall be directed to a constable, or to any resident by name, ordering that person to notify all voters assembled at the time and place appointed.
- (4) *Attested copy posted.* The person to whom it is directed shall post an attested copy at each polling place in the city at least seven (7) days before the election.
- (5) *Return on warrant.* The person who notifies the voters of the election shall make a return on the warrant stating the manner of notice and the time when it was given.
 - (a) If an original warrant is lost or destroyed, the return may be made or amended on a copy of the original warrant. (1942 Rev. Code, Ch. XXI, § 1; Ord. of 8-16-93)

Sec. 10-5. Polling hours.¹

The time for opening the polls shall be established by vote of the municipal officers within the limits established under the general laws of the state. The time for closing the polls shall be as established by the laws of the state. (1942 Rev. Code, Ch. XXI, § 2; Ord. of 8-16-93)

Sec. 10-6. Absentee voting.

The absentee voting procedure outlined in M.R.S.A. 21-A shall be used, except that the clerk shall perform the duties of the Secretary of State. (1942 Rev. Code, Ch. XXI, § 3; Ord. of 8-16-93)

Sec. 10-7. Wardens' duties.

It shall be the duty of the warden to supervise all activities at the polling place, including the counting of the votes, under the direction of the city clerk. The warden shall have such other duties and powers as provided by the provisions of 21-A M.R.S.A. (1942 Rev. Code, Ch. XXI, § 4; Ord. of 8-16-93)

Sec. 10-8. Election by plurality.²

The person who receives a plurality of the votes cast for election to any office is elected to that office. (1942 Rev. Code, Ch. XXI, § 4; Ord. of 8-16-93)

Sec. 10-9. Failure to elect or fill office.

If it shall appear that there is no choice of any of the officers to be elected from the citizens at large or from any of the several wards, or if any of the persons elected shall refuse to accept the office, warrants shall forthwith be issued for a new election. The same proceedings, so far as necessary, shall be as has been provided in this article, and section 6 of the charter, until said election is completed. (1942 Rev. Code, Ch. XXI, § 4; Ord. of 8-16-93)

Sec. 10-10. Form of warrant for city meetings.³

Ballot inspections, recounts of elections for office, referenda and the procedure for challenging a person who claims title to an office shall be governed by M.R.S.A. Title 30-A subsections 2530 to 2533, as amended. (1942 Rev. Code, Ch. XXI, § 5; Ord. of 8-16-93)

Sec. 10-11. Repealed.

¹ State law reference – 21-A M.R.S.A. § 626.

² State law reference – 30-A M.R.S.A. § 2555.

³ State law reference – 30-A M.R.S.A. § 2556.

(1942 Rev. Code, Ch. XXI, § 6; Ord. of 8-16-93)

Sec. 10-12. *Repealed.*

(Ord. of 8-8-77; Ord. of 8-16-93)

Chapter 11

ELECTRICITY¹

Sec. 11-1. National Electrical Code adopted.²

For the purpose of establishing rules and regulations to safeguard persons and buildings and the contents thereof from hazards arising from the use of electricity for light, heat, power and other purposes, and prescribing minimum standards considered necessary for the public safety, there is hereby adopted the National Electrical Code, as recommended by the National Fire Protection Association, being particularly the 2014 edition. One (1) copy is now on file in the city clerk's office. (1942 Rev. Code, Ch. XXXIII-B, § 1; Ord. No. 4-2-63; Ord. of 11-3-65; Ord. of 9-30-74; Ord. of 7-16-84; Ord. of 1-9-06; Ord. of 5-18-09; 7-2-12; 11-3-14)

Sec. 11-2. Code to be minimum standards.

It is intended by this chapter that all buildings within the boundaries of the city shall conform with the provisions and requirements of the National Electrical Code, and the provisions and requirements of said code shall be the minimum standards for the construction, alteration, use and maintenance of all buildings and the electrical fixtures and equipment therein contained within the limits of the city. (1942 Rev. Code, Ch. XXXIII-B, § 2; Ord. of 4-2-63)

Sec. 11-3. Penalty for violating code.

Any person, being the owner of or having control of any building or structure or part thereof which violates any of the provisions of the National Electrical Code or who fails to conform to any of the provisions thereof in making any electrical installation within the city, after having received a ten (10) day notice of such violation and has not corrected same within such period, shall be subject to the penalty provisions of section 1-8 of this Code. Each and every day such a violation continues after such ten (10) day notice period shall constitute a separate offense. (1942 Rev. Code, Ch. XXXIII-B, § 4; Ord. of 4-2-63)

Sec. 11-4. Liability for damages.

This chapter shall not be construed to relieve or lessen the responsibility or liability of any party owning, operating, controlling or installing any electric wiring devices or equipment for damages to person or property caused by any defect therein, nor shall the city be held as assuming any such liability by reason of the inspection authorized herein or by issuing a permit as herein provided for. (1942 Rev. Code, Ch. XXXIII-B, § 5; Ord. of 4-2-63)

Sec. 11-5. Permit required for electrical work, exceptions enumerated.

A permit shall be obtained from the department of building inspection before beginning any electrical installation work covered by the National Electrical Code within the city by the person intending to do such installation or by the owner of the premises in which it is to be done, but no permit shall be required under either of the following exceptions:

- (a) For any electrical repair work done for normal maintenance purposes.
- (b) Any person under the jurisdiction of the public utilities commission of this state or of the federal communications commission.

¹ **State law reference** – Electrical installations, 30-A M.R.S.A. §§ 4152-4174.

² **State law reference** – Municipal authority to adopt by reference nationally known technical codes, 30-A M.R.S.A. § 3003.

- (c) Any electrical equipment and work including construction, installation, operation, maintenance and repair in or about industrial or manufacturing plants.
- (d) Any electrical installations or equipment involved in the manufacture, test or repair of electrical equipment in the manufacturer's plant. (1942 Rev. Code, Ch. XXXIII-P, § 3; Ord. of 4-2-63; Ord. of 1-9-06)

Sec. 11-6. Filing of application; contents.

Applications for permits required by the previous section shall be filed with the department of building inspection and shall set forth the nature of the proposed electrical installation work and all other information necessary to show whether or not the installation work will conform with the provisions and requirements of the National Electrical Code. (1942 Rev. Code, Ch. XXXIII-B, § 3; Ord. of 4-2-63)

Sec. 11-7. Issuance of permits; fees deposited in treasury.

(a) If the building inspector or the electrical inspector is satisfied that the application required by this chapter is in proper form and that the proposed installation will conform with the National Electrical Code, either of them may issue the permit to the applicant on receipt of payment of the fee therefor in accordance with the schedule of fees set forth in the Master Fee Schedule attached hereto as Appendix B, and shall keep a record therefor for the department of building inspection.

(b) All such fees shall be deposited in the treasury. (1942 Rev. Code, Ch. XXXIII-B, § 3; Ord. of 4-2-63)

Sec. 11-8. Permits to be valid for one year; renewable.

Unless otherwise stated, each permit issued in accordance with the provisions of this chapter shall be valid for one (1) year from the date of issuance, except temporary permits which are valid only for the length of time issued for, and may be renewed by the original contractor for a period of not more than one (1) year for one-fourth (1/4) of the original fee. (Ord. of 2-7-67)

Sec. 11-9. Appeals.

In the event a permit required by this chapter is denied or that any person is aggrieved by any order or decision of the building inspector or the electrical inspector relative to the provisions or enforcement of this chapter, the applicant or aggrieved person may file an appeal in writing with the council in accordance with the provisions of 30-A M.R.S.A. § 4103, which provisions shall apply to such an appeal. (Ord. of 2-7-67; Ord. of 1-9-06)

Sec. 11-10. Schedule of fees.

The schedule of fees is set forth in the Master Fee Schedule attached hereto as Appendix B. For fee purposes, outlets will be classed as lights, lighting and small appliance receptacles (plugs), and lighting switches. Unless otherwise stated, each permit issued will be valid to one year from the date of issue, except temporary permits, and may be renewed by the original contractor for a period of not more than one year, for one quarter (1/4) of the previous permit fee. (Ord. of 2-7-67; Ord. of 12-3-77; Ord. of 7-6-82; Ord. of 1-22-91; Ord. of 1-25-99; Ord. of 11-25-02; Ord. of 1-9-06)

Sec. 11-10.1. Additional charge for belated permits.

When an electrical permit is not applied for within two (2) business days after the work has been started, the fee for such a belated permit shall be double the amount of the fee as per schedule. (Ord. of 12-27-73; Ord. of 1-9-06)

Sec. 11-11. Authority of inspectors to inspect, institute enforcement proceedings.

The electrical inspector and the building inspector shall have the authority to make such inspections of all buildings and electrical installations therein within the city as they may deem necessary to see that the provisions of this chapter and the National Electric Code are strictly enforced, and they shall have the authority to institute any proceedings which may be necessary for enforcing or preventing violations of this chapter and the National Electrical Code. (1942 Rev. Code, Ch. XXXIII-B, § 4; Ord. of 4-2-63; Ord. of 1-9-06)

Sec. 11-12. Approval required before concealing wiring.

No person shall cover or conceal or cause to be so covered or concealed any wiring for which a permit has been issued or is required before such wiring has been inspected and approved without having officially notified the electrical inspector at least forty-eight (48) hours prior to such covering or concealment. (1942 Rev. Code, Ch. XXXIII-B, § 4; Ord. of 4-2-63)

Sec. 11-13. Inspector may render systems completed without permit inoperative.

When any electrical work or wiring is found to have been installed without a proper permit having been secured, or not be in accordance with the provisions of this chapter, the electrical inspector, if he deems such work or wiring to be a hazard to the safety of persons or property, is hereby authorized and empowered to remove the fuses, cut the wires or otherwise render the system inoperative until such permit has been secured and the work of wiring reinspected and approved. (1942 Rev. Code, Ch. XXXIII-B, § 4; Ord. of 4-2-63)

Sec. 11-14. Classification of outlets.

For fee purposes, outlets will be classed as lights, lighting and small appliance receptacles, plugs and lighting switches. (Ord. of 2-7-67)

Sec. 11-15. Electrical inspector to make quarterly report.

The electrical inspector shall make a quarterly report of his activities to the council. (Ord. of 2-7-67)

Chapter 12

FARMER'S MARKET

(Farmer's Market deleted. See [Chapter 20, Licenses & Permits](#))

Chapter 13

FIRE PROTECTION AND PREVENTION¹

- Art. I. [In General](#), §§ 13.1.1-13.1.17
- Art. II. [Companies](#), §§ 13.2.1-13.2.7
- Art. III. [Fire Alarm System](#), §§ 13.3.1-13.3.4
- Art. IV. [Pensions](#), §§ 13.4.1-13.4.2
- Art. V. [Water Supplies for Fire Fighting](#), §§ 13.5.1-13.5.4.2
- Art. VI. [Fire Prevention](#), §§ 13.6.1-13.6.7.16
- Art. VII. [Self-Service Gas Stations](#), §§ 13.7.1-13.7.8
- Art. VIII. [Solid, Oil & Gas Fuel Appliances](#), §§ 13.8.1-13.8.14
- Art. IX. [Sprinkler Systems](#), §§ 13.9.1-13.9.8

ARTICLE I. IN GENERAL

Sec. 13-1.1. Fire department established.

In accordance with the provisions of Section 19 of the charter, a fire department is hereby established in the city to be known as the Westbrook Fire Department. (1942 Rev. Code, Ch. XV, § 1) Renamed the Westbrook Fire Rescue Department (2000; sub. revsn. Ord. of 8-13-07)

Sec. 13-1.2. Composition of Westbrook Fire Rescue Department; appointments to board of engineers.

(a) The department shall consist of a permanent Chief of the Department, two (2) assistance engineers to be known as deputy chiefs, and as many firefighters/EMS providers as the council shall from time to time deem necessary.

(b) The two (2) assistant engineers mentioned in subsection (a) shall be appointed by the mayor to serve for three-year terms on the board of engineers, which shall consist of the chief and the two (2) assistance engineers and they shall receive certificates of their appointments. Such appointments shall be for staggered terms and except to fill a vacancy, no more than one appointment shall be made in any one year. However, upon the adoption of this section, the appointment of the first engineer shall be for three (3) years and the appointment of the second engineer shall be for two (2) years, with all subsequent appointments, except to fill a vacancy, to be for full three-year terms. (1942 Rev. Code, Ch. XV, § 2; Ord. of 11-7-67; Ord. of 1-15-79; Ord. of 9-26-05)

¹ **Charter reference** – Municipal fire department, § 19; **State law reference** – Fire protection and prevention, 30-A M.R.S.A. §§ 3151, et seq.

Sec. 13-1.3. Board of engineers to organize; quorum; election of officers; establish rules.

(a) The assistant engineers appointed by the mayor to the board of engineers shall, after being duly qualified, meet and organize with the Chief of the Department.

(b) A majority of the board shall constitute a quorum.

(c) In the absence of the Chief of the Department, the engineer next in rank shall be presiding officer.

(d) The board may appoint a secretary and other officers, and may make such rules and regulations for their own government as they deem expedient, subject however to the approval of the council. (1942 Rev. Code, Ch. XV, § 3; Ord. of 9-26-05)

Sec. 13-1.4. Board's authority to make regulations governing department, extinguishing fires.

The board of engineers may make such rules and regulations for the government of the fire rescue department and for the extinguishing of fires as they may from time to time deem expedient, the same shall not be repugnant to the laws of the state and shall be subject to the approval of the council. (1942 Rev. Code, Ch. XV, § 4; Ord. of 9-26-05)

Sec. 13-1.5. Board to supervise, control department's equipment, officers of companies, persons at fires.

The board of engineers shall at all times have the superintendence and control of all buildings, furniture and apparatus used for the purpose of the fire rescue department; over the officers and members of the several companies attached to the department; and over all persons present at fires. (1942 Rev. Code, Ch. XV, § 4; Ord. of 9-26-05)

Sec. 13-1.6. Board's suspension power; report of action to council.

(a) A majority of the board of engineers shall have full power to suspend from duty any company that shall willfully neglect or refuse to perform their duty, or shall be guilty of disorderly conduct, or of disobedience of orders of either of the engineers or for the violation of any of the rules and regulations of the fire department.

(b) They shall also have full power to suspend, for sufficient cause, any officer or member of the department; and when such company officer or member shall have been suspended, the facts in the case shall be immediately reported to the council for final action. (1942 Rev. Code, Ch. XV, § 7)

Sec. 13-1.7. Board's authority to order hazards removed; removal by city; penalty.

(a) It shall be the duty of the board of engineers, at such times as they may deem expedient, to examine or cause to be examined such premises where fire is at any time used, and where danger is anticipated; to examine into all places where shavings, or other combustible materials or ashes may be collected or deposited; and to direct such alterations, repairs or removal to be made in such cases as may be required, whenever in the opinion of the board they may be considered dangerous to the security of any portion of the city from fire.

(b) In the case of the neglect or refusal of the owner or occupant of such building, to make or commence to make such alterations, repairs or removal within forty-eight (48) hours after notice, the board may cause the same to be done at the expense of the owner or occupant. If such owner or occupant shall neglect or refuse to pay such expense, he shall be subject to the general penalty provisions of section 1-8 of this Code. (1942 Rev. Code, Ch. XV, § 5; Ord. of 9-26-05)

Sec. 13-1.8. Fires to be investigated; reports kept.

The Chief of the Department or his designee shall make strict and thorough investigation into the causes of all fires, and report the results of such investigations shall be kept. (1942 Rev. Code, Ch. XV, § 5; Ord. of 9-26-05)

Sec. 13-1.9. Board's authority to demolish buildings; regulate work.¹

Whenever it shall be determined at any fire by a majority of the board of engineers present, one (1) of whom shall be the chief, if present, to prevent the spread of a fire, the same may be done by their joint orders, and they shall have the sole and absolute control of tall streets, lanes, sidewalks and squares in the vicinity of such fire, and may close up such places, or exclude persons or vehicles from passage through for such length of time as may be necessary for the preservation of order and for the extinguishing of fires. (1942 Rev. Code, Ch. XV, § 6; Ord. of 9-26-05)

Sec. 13-1.10. Chief to direct department's activities.

The Chief of the Department shall direct all proper measures for the extinguishing of fires, protection of property, preservation of order and observance of the rules and regulations of this chapter. (1942 Rev. Code, Ch. XV, § 9; Ord. of 9-26-05)

Sec. 13-1.11. Chief to control personnel.

The Chief of the Department shall have control of all the engineers and all other persons attached to the Fire Rescue Department. (1942 Rev. Code Ch. XV, § 9; Ord. of 9-26-05)

Sec. 13-1.12. Chief to inspect department's apparatus, buildings; annual report.

It shall be the duty of the Chief of the Department to examine or cause to be examined the condition of the apparatus and buildings used by the department, and of the companies attached thereto, as often as circumstances may render it expedient, or whenever directed by the council or the public safety, and annually report the same to the council. (1942 Rev. Code, Ch. XV, § 9; Ord. of 9-26-05)

Sec. 13-1.13. Annual report of estimated losses.

The Chief of the Department shall annually report an account of the loss by fire, as near as can be estimated, to the council. (1942 Rev. Code, Ch. XV, § 9; Ord. of 9-26-05)

Sec. 13-1.14. Authority to assist other municipalities in fighting fires.

The Chief of the Department or his duly authorized representative, upon request for aid from a duly authorized representative of a municipal or incorporated volunteer fire department of any other municipality within the State, is hereby authorized to send to such other municipal or incorporated volunteer fire and/or EMS department such equipment or personnel belonging to the Westbrook Fire Rescue Department of the city as he shall deem feasible for the purpose of rendering aid in extinguishing a fire within such other municipality. (1942 Rev. Code, Ch. XV, § 28; Ord. of 11-19-63; Ord. of 11-19-63)

Sec. 13-1.15. Privileges and immunities of assisting firemen.

In the event that the Westbrook Fire Rescue Department shall request and receive aid as provided in the preceding section from a municipal or incorporated fire department of the aiding

¹ **State law reference** – Municipal authority to regulate demolition of buildings, 30-A M.R.S.A. § 3001.

municipality shall have the same privileges and immunities as if acting in their own municipality.

When the members of the Westbrook Fire Rescue Department render such aid to another municipality, they shall have the same privileges and immunities as if acting in the City of Westbrook. (1942 Rev. Code, Ch. XV, § 28; Ord. of 11-19-63; Ord. 9-26-05)

Sec. 13-1.16. Authority to contract for mutual assistance.

The Mayor, with the approval of the Council is hereby authorized to execute an agreement for and on behalf of the city with any other municipality enacting a similar ordinance agreeing to provide such aid upon request to a municipal or incorporated volunteer fire and/or EMS department of such other municipality. (1942 Rev. Code, Ch. XV, § 28; Ord. of 11-19-63; Ord. of 9-26-05)

Sec. 13-1.17. Giving of false alarms prohibited.

No person shall willfully or maliciously give or cause to be given a false alarm of fire by outcry or by telephone system. (1942 Rev. Code, Ch. XV, § 26) (Ord. of 9-26-05)

ARTICLE II. COMPANIES

Sec. 13-2.1. Council's authority to form.

As many engine, ladder, squad and rescue companies shall from time to time be formed, reorganized or reduced as the council shall deem expedient. (1942 Rev. Code, Ch. XV, § 10; Ord. of 3-10-04; Ord. of 9-26-05)

Sec. 13-2.2. Composition.

Companies of the Fire Rescue Department shall consist of as many members and officers as the board of engineers, with the approval of the Council, as shall be deemed sufficient. The Chief of the Department shall determine the number of officers required per company based upon the total amount of members within the respective company. (1942 Rev. Code, Ch XV, § 8; Ord. of 2-7-77; Ord. of 12-19-83; Ord. of 3-10-04; Ord. of 9-26-05)

Sec. 13-2.3. Selection of members.

The selection of members for new companies shall be made by the Board of Engineers, subject to the approval of the Council. (1942 Rev. Code, Ch. XV, § 10; Ord. of 3-10-94; Ord. of 9-26-05)

Sec. 13-2.4. Appointment of Officers

The officers of companies, as enumerated in this article, shall be appointed by the Chief of the Department in compliance with the Call Company promotional process as approved by the City Council. Said appointment shall be sent to the Council for their further approval. If approved by the Council, each officer so approved shall receive a certificate of appointment, signed by the Mayor and City Clerk, and shall hold office for three years unless removed for just cause prior to that time. (1942 Rev. Code, Ch.XV, Sec. 11) (Rev. 3-10-04)

Sec. 13-2.5. Account of property and records of proceedings, service of members.

(a) The captains of the companies of the Westbrook Fire Rescue Department shall keep pr cause to be kept by the clerks of their respective companies, an account of all the City property entrusted to their care, and fair records of the proceedings of their companies in books provided

for that purpose by the City, which record or roll books are always to be subject to the orders of the engineers.

(b) Each Captain shall also keep or cause to be kept an accurate account of the term of service of each member of his/her company. (1942 Rev. Code, Ch. XV, § 13) (Rev. 3-10-04)

Sec. 13-2.6. Monthly, special meetings.

(a) One (1) evening in each month the companies shall meet for the transaction of business, the date to be approved by the Board of Engineers.

(b) Whenever the Chief of the Department or the Board of Engineers shall consider it necessary, the companies shall meet for the purpose of inspection and drill with their respective apparatus. (1942 Rev. Code, Ch. XV, § 12) (Rev. 3-10-04)

Sec. 13-2.7. Compensation.

Companies of the Fire Rescue Department shall receive such compensation for their services as the council may from time to time deem necessary, to be paid to the officers entitled by the company bylaws to receive it. (1942 Rev. Code, Ch. XV, § 15; Ord. of 9-26-05)

ARTICLE III. FIRE ALARM SYSTEM

Sec. 13-3.1. False alarms.

For the third and successive Fire Rescue Department response to a false alarm or false activation during a calendar year, the owner shall pay a penalty set forth in the Master Fine Schedule attached hereto as Appendix C. False alarms are those activated by malicious intent or by alarm detector/panel malfunction. No person shall reset a Fire Alarm or Sprinkler System, that has caused the Fire Rescue Department to respond, without approval of the Fire Rescue Department approval shall be considered a false alarm, and shall be penalized as such. (Ord. of 4-7-86; 9-26-05)

Sec. 13-3.2. Connection of fire alarm reporting equipment.

When City ordinance, the National Fire Prevention Code, or other regulation requires that a building or structure be equipped with a fire alarm, such system shall include approved supervisory equipment, which shall transmit an alarm to an approved receiver. Such supervision shall be by connection to a private alarm station, that has been approved as a message monitoring service by Underwriters' Laboratories, Inc. or Factual Mutual Insurance Company and accepted by the Chief of the Department. (Ord. of 12-1-86; Ord. of 3-2-98; Ord. 9-26-05)

Sec. 13-3.3. Fire alarm modification.

No fire alarm system, once installed and operational, shall be modified or extended without the prior approval of the Fire Rescue Department. Neither shall such a system be removed, rendered inoperable, disconnected from the supervisory system, interrupted or tested in any manner, without the prior knowledge of the Fire Rescue Department. (Ord. of 9-21-87; Ord. of 2-23-98; Ord. of 3-2-98; Ord. of 9-26-05)

Sec. 13-3.4. Rules.

The Chief of the Department is authorized to promulgate all reasonable rules, procedures and documentation, not inconsistent with this article, to carry out the purposes and provisions thereof. (Ord. of 3-2-98; Ord. of 9-26-05)

ARTICLE IV. PENSIONS¹

Sec. 13-4.1. Age, years of service required for eligibility.

Firemen shall be eligible for pension upon reaching the age of sixty (60) years and having served a minimum of twenty-five (25) years, fifteen (15) of which must be as a permanent man. (1942 Rev. Code, Ch. XV-A, § 1)

Sec. 13-4.2. Permanent men receive retirement pay.

Permanent men, on being retired on pension by the board of engineers of the fire department, shall receive retirement pay under the Maine State Retirement Plan. (1942 Rev. Code, Ch. XV-A, § 2; Ord. of 11-21-61)

ARTICLE V. WATER SUPPLIES FOR FIRE FIGHTING

Sec. 13-5.1. Fire hydrants, rules.

No person shall install, relocate, modify or disconnect from the supply main for service any fire hydrant, whether such fire hydrant be located in a public way or on private property, except in accordance with the requirements of this section. (Ord. of 4-25-05; Ord. of 9-26-05)

Sec. 13-5.2. Fire hydrants, standards.

Sec. 13-5.2.1. No fire hydrant shall be so installed, relocated or modified unless it shall conform to the specifications as acceptable to the Portland Water District and the city. (Ord. of 4-25-05; Ord. of 9-26-05)

Sec. 13-5.2.2. Water mains proposed to provide water supply to fire hydrants in private developments or subdivisions shall be at least eight (8) inches in diameter. All residential subdivisions and private developments shall install hydrants at driving intervals of not more than 800 feet. All non-residential and mixed-use subdivisions and private developments shall install hydrants at driving intervals of not more than five hundred (500) feet. (Ord. of 4-25-05; Ord. of 9-26-05)

Sec. 13-5.2.3. Each fire hydrant, no matter where located, shall be connected to the water supply main by means of a branch line at least six (6) inches in diameter, with a hydrant control valve located on the branch line. All piping connecting supply mains and branch lines to fire hydrants shall be ductile iron pipe. (Ord. of 4-25-05; Ord. of 9-26-05)

Sec. 13-5.2.4. All fire hydrants, whether owned or leased by the city or privately owned, shall be maintained in proper operating condition at all times and shall be inspected on a regular basis to assure their efficient operation IAW NFPA 24. Such inspections shall be conducted at least monthly from October 15th and April 15th, and once between April 16th and October 14th. If any such inspection reveals that a fire hydrant is inoperative or not in proper operating condition, the fire department shall be immediately notified. The owner of a private fire hydrant shall be responsible for correcting any such condition discovered affecting such privately owned fire hydrant as expeditiously as possible and shall notify the fire department upon completion of the necessary repairs. Owners of private hydrants shall be responsible for all required inspections and maintenance including but not limited to, removing accumulations of snow/ice from the fire hydrant(s) and draining the hydrant(s) prior to winter freeze. (Ord. of 4-25-05)

¹ **State law reference** – State retirement system, 5 M.R.S.A. §§ 1001 et seq.

Sec. 13-5.2.5. Upon the location, relocation or modification of any private or public fire hydrant, the owner or contractor for the owner of any such fire hydrant shall notify the fire department immediately after installation, relocation or modification of such fire hydrant has been completed. Such hydrant shall be flow tested by the owner or contractor for the owner and the pressure and gallon per minute flow results of such testing reported to the chief of the fire department. No such private or public fire hydrant shall be utilized or placed in service by the owner until after final approval by the Chief of the Department, which final approval shall not be granted by the chief until after acceptable results have been obtained from the flow testing. Hydrants within new subdivisions and developments shall be installed and operational prior to any actual combustible construction commencing. (Ord. of 4-25-05; Ord. of 9-26-05)

Sec. 13-5.3. Obstructions.

No person or persons shall obstruct or permit to be obstructed by any means any fire hydrant located within the City of Westbrook. Any person or persons causing snow to obstruct a fire hydrant shall immediately clear said fire hydrant. Failure to so do shall result in clearing of the fire hydrant by the Westbrook Fire Rescue Department and charging the person responsible for obstructing the fire hydrant for all costs associated therewith. (Ord. of 4-25-05; Ord. of 9-26-05)

Sec. 13-5.4. Private ways.

Sec. 13-5.4.1. In areas of the City where landowners elect to develop private ways in compliance with the Land Use Ordinances of the City of Westbrook, water supplies for fire suppression purposes shall be provided by one of the following options.

- (a) Option 1. – Fire Suppression shall be provided by water mains and fire hydrants as specified in this Article.
- (b) Option 2. – Private ways up to eight hundred (800) feet in length from the nearest municipal fire hydrant, measured by actual driving distance, shall install an automatic sprinkler system per NFPA 13D in one and two family dwellings, NFPA 13R in all other residential structures and NFPA 13 in any commercial structure.
- (c) Option 3. – Private ways exceeding eight hundred (800) feet in length from the nearest municipal fire hydrant, measured by actual driving distance, shall install an automatic sprinkler system per NFPA 13D in one and two family dwellings, NFPA 13R in all other residential structures and NFPA 13 in any commercial structure. Additionally, the property owner(s) shall supply an underground stationary water tank of no less than ten thousand (10,000) U.S. gallons with a static water supply system at no less than eight hundred (800) foot intervals. Said requirements for a static water supply system shall be per specifications of the Fire Department and NFPA 1142 Standard on Water Supplies for Suburban and Rural Firefighting, 2001 Edition. (Ord. of 4-25-05; Ord. of 9-26-05)

Sec. 13-5.4.2. Automatic sprinkler systems.

Dwellings protected by an automatic sprinkler system meeting the NFPA 13D or the NFPA 13R standards are not required to be privately monitored, additionally these systems must be provided with a 2.5 inch female NST Fire Department Connection and cap. (Ord. of 4-25-05; Ord. of 9-26-05)

ARTICLE VI. FIRE PREVENTION

Sec. 13-6.1. National Fire Codes adopted as fire prevention code.

Sec. 13-6.1.1. The city hereby adopts the 2009 edition of NFPA 1, *Uniform Fire Code* documents listed in Chapter 2 of that Code; prescribing rules and regulations for fire prevention and conditions hazardous to life and property from fire or explosives; providing for the issuance of permits and collection of fees; repealing previous editions of NFPA 1; providing a penalty; providing a serviceability clause; providing for publication; and providing an effective date. NFPA 1 The Uniform Fire Code and documents adopted by Chapter 2, a copy of which are now on file and are open to inspection by the public in the office of the city clerk, are hereby adopted and incorporated into this Code fully as if set out at length herein, and from the date which this ordinance shall take effect, the provisions thereof shall be controlling within the city limits. (Ord. of 5-18-09)

Sec. 13-6.1.2. Adoption of NFPA 101.

The city hereby adopts the 2009 edition of NFPA 101, *The Life Safety Code* documents listed in Chapter 2 of that Code; prescribing rules and regulations for fire prevention and conditions hazardous to life and property from fire or explosions; providing for the issuance of permits and collection of fees; repealing previous editions of NFPA 101; providing a penalty; providing a serviceability clause; providing for publication; and providing an effective date. NFPA 101 The Life Safety Code and documents adopted by Chapter 2, a copy of which are now on file and are open to inspection by the public in the office of the city clerk, are hereby adopted and incorporated into this Code fully as if set out at length herein, and from the date which this ordinance shall take effect, the provisions thereof shall be controlling within the city limits. (Ord. of 5-18-09)

Sec. 13-6.1.3. Amendments to adopted codes.

Additions, insertions and changes to adopted codes.

- (1) NFPA 1 Section 1.10 is hereby deleted and Section 13-6.5 of this Code is herein adopted as the Board of Appeals.
- (2) Additions, Insertions and Changes, NFPA 101 Section 24.3.5.1 through and including Section 24.3.5.2 are hereby deleted. The requirements of the 2009 International Residential Code shall apply in place of these deletions.
- (3) NFPA 101 Section 31.3.4.5.4 is hereby deleted. (superseded by M.R.S.A. Title 25 § 2464)
- (4) Reserved.
- (5) Reserved.
- (6) Reserved.

(Ord. of 4-5-71; Ord. of 12-16-74; Ord. of 9-21-87; Ord. of 11-2-98; Ord. of 4-2-01; Ord. of 6-5-06; Ord. of 5-18-09; Ord. of 5-14-12; Ord. of 7-16-12)

Sec. 13-6.2. Fire Prevention Bureau.

The Fire Prevention Code and the national fire codes shall be enforced by the Fire Prevention Bureau in the fire rescue department of the city, which is hereby established and which shall be operated under the supervision of the Chief of the Department. The Chief of the Department may detail such members as inspectors as shall from time to time be necessary for the enforcement of said codes. (Ord. of 4-5-71; Ord. of 2-28-75; Ord. of 9-26-05)

Sec. 13-6.3. Fire inspector within fire rescue department; duties generally.

The position of fire inspector shall be established within the fire rescue department. The Fire Inspector shall be primarily responsible for enforcement of the Fire Prevention Code, and other such duties as are assigned by the chief of the fire department. (Ord. of 2-2-87; Ord. of 9-26-05)

Sec. 13-6.4. Penalty for violating codes.

Any person, being the owner or tenant or having control of any property or structure or part thereof which violates any of the provisions of the said Fire Prevention Codes and/or another section of this article or who fails to conform to any of the provisions thereof, after having received a ten-day notice of such violation, shall be subject to the penalty provisions of section 1-8 of this Code. The fire inspector, Chief of the Department, or a person designated by the Chief of the Department may cause a notice of violation or order to be served on the person responsible for the violation or non-compliance condition, in violation of the provisions hereof, or in violation of a plan or of a detail statement made with a permit application. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

If the notice is not complied with promptly, the fire inspector, Chief of the Department, or a person designated by the Chief of the Department may issue a civil summons, or may request that the city legal department institute the appropriate proceedings, in law or in equity; to restrain, correct or abate such violation.

Such violations shall be punishable by a fine, as set forth in Section 1-8 of this Code, together with such injunctive relief or administrative remedies, as may be available. Each and every day such a violation continues after such ten-day notice period shall constitute a separate offense. (Ord. of 4-5-71; Ord. of 2-18-75; Ord. of 9-26-05)

Sec. 13-6.5. Board of appeals.

The zoning board of appeals is hereby established as the board of appeals to sit in judgment on matters concerning interpretation of NFPA Codes and any other standards within this chapter adopted by the city, and their enforcement.

The board of appeals shall meet whenever directed by the appointing authority to interpret the provisions of this code and to consider and rule on any properly filed appeal from a decision of the authority having jurisdiction, giving at least five days notice of hearing but in no case shall it fail to meet on an appeal within 30 calendar days of the filing of notice of appeal. All of the meetings of the board shall be open to the public. (9-26-05)

Sec. 13-6.6. Means of appeals.

Any person shall be permitted to appeal a decision of the authority having jurisdiction to the board of appeals when it is claimed that any one or more of the following conditions exist:

- (a) The true intent of the codes or ordinances described in this Code has been incorrectly interpreted;
- (b) The provisions of the codes or ordinances do not fully apply;
- (c) A decision is unreasonable or arbitrary as it applies to alternatives or new materials. An appeal shall be submitted to the authority having jurisdiction in writing within thirty (30) calendar days of notification of violation outlining the Code provision from which relief is sought and remedy proposed. (Ord. of 9-26-05)

Sec. 13-6.7.1. Permits and approvals.

The Westbrook Fire Rescue Department shall be authorized to establish and issue permits, certificates, notices, and approvals, or orders pertaining to establish and issue permits, certificates, notices, and approvals, or orders pertaining to fire control and fire hazards pursuant to this section. Exception: this shall not apply to facilities that have in place a plan or procedure to ensure the fire-safe operation of the facility as required this article. Such a plan or procedure must be approved by the Westbrook Fire Rescue Department.

Sec. 13-6.7.2. Revocation of permits and approvals.

The Westbrook Fire Rescue Department shall be permitted to revoke a permit or approval issued if any violation of adopted Codes is found upon inspection or in case there have been any false statement or misrepresentations inspection or in case there have been any false statements or misrepresentations submitted in the application or plans on which the permit or approval was based.

Sec. 13-6.7.3. Revocation of other permits.

Any attempt to defraud or otherwise deliberately or knowingly design, install, service, maintain, operate, sell, represent for sale, falsify records, reports, or applications, or other related activity in violation of this Code shall be cause for immediate suspension or revocation of any related licenses, certificates, or permits issued by this jurisdiction. In addition, any such violation shall be subject to any other criminal or civil penalties as available by the laws of this jurisdiction including Sec. 1-8.

Sec. 13-6.7.4. Effective date of revocation.

Revocation shall be constituted when the permittee is duly notified by the Westbrook Fire Rescue Department or its designee.

Sec. 13-6.7.5. Continued occupancy or use after revocation or suspension prohibited.

Any person who engages in any business, operation, or occupation, or uses any premises, after the issued therefore has been suspended or revoked pursuant to the provisions of this article, and before such suspended permit has been reinstated or a new permit issued, shall be in violation of this article, and before such suspended permit has been reinstated or a new permit issued, shall be in violation of this article and subject to any other criminal or civil penalties as available by the laws of this jurisdiction including Section 1-8.

Sec. 13-6.7.6. Compliance required.

A permit shall be predicated upon compliance with the requirements of this Code and shall constitute written authority issued by the authority having jurisdiction to maintain, store, use, or handle materials or to conduct processes that could produce conditions hazardous to life or property, or to install equipment used in connection with such activities. Any permit issued under this ordinance shall not take the place of any other license or permit required by other regulations or laws of this jurisdiction.

Sec. 13-6.7.7. Inspections.

The Westbrook Fire Rescue Department shall have the authority to require an inspection prior to the issuance of a permit.

Sec. 13-6.7.8. Duration of permit.

A permit issued under this article shall continue until revoked or for the period of time designated on the permit. The permit shall be issued to one person or business only and for the

location or purpose described in the permit. Any change affecting any of the conditions of the permit shall require a new or amended permit.

Sec. 13-6.7.9. Extension of permit.

The Westbrook Fire Rescue Department shall have authority to grant an extension of the permit time period upon presentation by the permittee of a satisfactory reason for failure to start or complete the work or activity authorized by the permit.

Sec. 13-6.7.10. Application.

Applications for permits shall be made to the WESTBROOK FIRE DEPARTMENT on forms provided by the Westbrook Fire Rescue Department and shall include the applicant's answers in full to inquiries set forth on such forms. Applications for permits shall be accompanied by such data as required by the Westbrook Fire Rescue Department.

Sec. 13-6.7.11. Review of application.

The Westbrook Fire Rescue Department shall review all applicants submitted and issue permits as required. If any application for a permit is rejected by the Westbrook Fire Rescue Department, the applicant shall be advised of the reasons for such rejection. Permits for activities requiring evidence of financial responsibility by the Westbrook Fire Rescue Department shall not be issued unless proof of required financial responsibility is furnished.

Sec. 13-6.7.12. Posting required.

A copy of the permit shall be posted or otherwise readily accessible at each place of operation or carried by the permit holder as specified by the Westbrook Fire Rescue Department.

Sec. 13-6.7.13. Any activity authorized by any permit issued under this article shall be conducted by the permittee or the permittee's agents or employees in compliance with all requirements of this article applicable thereto and in accordance with the approved plans and specifications. No permit issued under this article shall be interpreted to justify a violation of any provision of this article or any other applicable law or regulation. Any addition or alteration of approved plans or specifications shall be approved in advance by the Westbrook Fire Rescue Department, as evidenced by the issuance of a new or amended permit.

Sec. 13-6.7.14. Permit contents.

Permits shall be issued by the Westbrook Fire Rescue Department and shall bear the name and signature of the Westbrook Fire Rescue Department's designated representative. In addition, the permit shall indicate:

- (1) Operation or activities for which the permit is issued;
- (2) Address or location where the operation or activity is to be conducted;
- (3) Name and address of the permittee;
- (4) Permit number and date of issuance;
- (5) Period of validity of the permit;
- (6) Inspection requirements.

Sec. 13-6.7.15. Inspections.

Any application for, or acceptance of, any permit requested or issued pursuant to this article shall constitute agreement and consent by the person making the application or accepting

the permit to allow the Westbrook Fire Rescue Department to enter the premises at any reasonable time to conduct such inspections as required by this article.

Sec. 13-6.7.16. Types of permits.

The Westbrook Fire Rescue Department shall have the authority to issue permits for the following operations within the jurisdiction:

- (1) *Automatic fire suppression systems.* Installation of or modification to any automatic fire suppression system. Maintenance performed in accordance with this NFPA Coded is not considered a modification and does not require a permit.
- (2) *Fire alarm and detection systems and related equipment.* Installation of or modification to any fire alarm and detection systems and related equipment. Maintenance performed in accordance with Chapter 8 of NFPA 1 is not considered a modification and does not require a permit.
- (3) *Fire pumps and related equipment.* Installation of or modification to fire pumps and related fuel tanks, jockey pumps, controllers, and generators. Maintenance performed in accordance with Section 6-4 of NFPA 1 is not considered a modification and does not require a permit.
- (4) *Standpipe systems.* Installation, modification, or removal from service of any standpipe system. Maintenance performed in accordance with Section 6-2 of NFPA 1 is not considered a modification and does not require a permit.
- (5) *Private fire hydrants.* Installation, modification, or removal from service of any private fire hydrants.
- (6) *Bonfires and outdoor rubbish fires.* Written permission required. No person shall kindle, maintain or assist in maintaining any outdoor fire within the city without obtaining written permission from the Chief of the Department. Such burning shall be done under such property safeguards as the Chief of the Department may direct, taking into consideration such factors as time, place, and weather conditions. Permission shall be conditioned on one's keeping sufficient control of the fire, being responsible for all damages therefrom, and extinguishing all embers upon completion. The burning of "slash" from the clearing of lots and/or right of ways at construction sites is prohibited. Exceptions: residential use of outdoor grills and fireplaces for recreational purposes such as preparing food is permissible without permit provided that no nuisance is created thereby.
- (7) *Storage of gasoline and diesel aboveground.* The storage aboveground of more than fifty (50) gallons of flammable and/ or combustible liquids containing gasoline or diesel fuel. No such permit shall be issued unless the aboveground storage tank or container is located at least fifty (50) feet from any building or structure and fifty (50) feet from the adjoining property line. No permit shall be allowed for storage of more than five thousand (5000) gallons of flammable and/ or combustible liquids containing gasoline or diesel fuel at any one location. (Ord. of 3-13-72)
- (8) *Removal of underground fuel and hazardous substance storage tanks.* For the purpose of prescribing fire safety measures for the removal of underground fuel and hazardous substance storage tanks, there are hereby adopted the procedures for removal or underground storage tanks as recommended by the AIA Fire Prevention Code, 1970

- edition; by the American Petroleum Institute, being particularly A.P.I. Bulletin 1604, dated March 1981; and Maine D.E.P. Interim Guidelines, issued July 1986, which are incorporated as if set forth at length herein. No underground storage tank shall be junked, cut up or dismantled within the city limits unless the prior written approval of the Chief of the Department is obtained. (Ord. of 2-2-87)
- (9) *Fireworks*. Possession, storage, manufacture, sale, or discharge of fireworks within the jurisdiction.
- (10) *Flammable finished application*. The spray application of flammable or combustible liquids. Installation or modification of any spray room or booth.
- (11) *Storage of oxidizers and organic peroxides regulated by Chapter 27 of NFPA 1*.
- (a) Materials classified as having more than one hazard category if the quantity limits are exceeded in any category.
 - (b) Repair, abandon, remove, place temporarily out-of-service, close, or substantially modify a storage facility.
 - (c) Installation, modification, alteration, or addition to any stationary aboveground or underground hazardous materials storage tank, secondary containment system, ventilation system, exhaust system, explosion venting or suppression systems, or gas detection systems.
 - (d) A plan to close a facility or terminate storage, dispensing, handling, or use of hazardous materials shall be submitted for approval at least thirty (30) days prior to the action. The plan shall demonstrate that hazardous materials that were stored, dispensed, handled, or used in the facility have been transported, disposed of, or reused in a manner that eliminates the need for further maintenance and any threat to public safety.
 - (e) Storage, handling or use of chlorine.
 - (f) Installation or modification to any chlorine gas system.
- (12) *Lumber yards and woodworking plants*. Storage of lumber exceeding 100,000 board feet.
- (13) *Magnesium*. Storage, handling, or processing of magnesium in quantities deemed significant by the authority having jurisdiction.
- (14) *Organic coatings*. Operation and maintenance of a facility that manufactures organic coatings.
- (15) *Outdoor storage of scrap tires*. Establish, conduct, or maintain any outdoor storage of scrap tires that exceeds 2,500 feet of total volume of scrap tires.
- (16) *Repair garages and service stations*. Operation of repair garages and service stations.
- (17) *Tar kettles*. Permit shall be obtained at least two working days prior to the placement of a tar kettle.
- (18) *Roof top heliports*. Construction, modification, or operation of a roof top heliport.
- (Ord. of 9-26-05)

ARTICLE VII. SELF-STORAGE GAS STATIONS

Sec. 13-7.1. "Self-service gas station" defined.

"Self-service gas station" shall mean a parcel of property where flammable and combustible liquids used as motor fuels are stored and subsequently dispensed from approved dispensing equipment such as, but not limited to, coin-operated, card-operated and remote controlled pumps into the fuel tanks of motor vehicles by persons other than the service station attendant. (Ord. of 12-11-72; Ord. of 9-26-05)

Sec. 13-7.2. Standards generally.

All fuel dispensing stations shall comply with applicable NFPA Codes. (Ord. of 9-26-05)

Sec. 13-7.3. Attendant to be on duty; general functions, responsibilities and duties of attendant.

(a) All self-service gas stations shall have at least one attendant on duty while the station is open to the public. The attendant's primary function shall be to supervise, observe, and control the dispensing of the motor fuel while same is actually being dispensed.

(b) It shall be the responsibility of the attendant to:

- (1) prevent the dispensing of such motor fuel into portable containers which do not comply with section 13-84;
- (2) control sources of ignition;
- (3) immediately handle accidental fuel spills; and
- (4) immediately use fire extinguishers in case of a fire.

(c) The attendant on duty must be at least eighteen (18) years of age and shall be mentally and physically capable of performing the functions and assuming the responsibilities prescribed in this section. (Ord. of 12-11-72; Ord. of 9-26-05)

Sec. 13-7.4. Dispensing in portable containers.

No delivery of any Class I or Class II liquid shall be made into portable containers unless the container is constructed of metal, has a tight closure and is fitted with a spout or so designed that the contents can be poured without spilling. (Ord. of 12-11-72; Ord. of 9-26-05)

Sec. 13-7.5. Emergency power cutoff.

A clearly identified and easily accessible switch(es) or circuit breaker(s) shall be provided at a location remote from dispensing devices, including remote pumping systems, to shut off the power to all dispensing devices in the event of an emergency. (Ord. of 12-11-72; Ord. of 9-26-05)

Sec. 13-7.6. Dispensing area.

(a) The dispensing area shall at all times be in clear view of the attendant and the placing or allowing of any obstacle to come between the dispensing area and the attendant control area shall be prohibited. The attendant shall at all times be able to communicate with persons in the dispensing area.

(b) All hose nozzle valves used shall be of the automatic-closing type without a latch-open device. (Ord. of 12-11-72; Ord. of 9-26-05)

Sec. 13-7.7. Operating instructions and warning signs.

Operating instructions shall be conspicuously posted in the dispensing area together with warning signs incorporating the following or equivalent wording:

- (a) *Warning*—It is unlawful and dangerous to dispense gasoline into unapproved containers;
- (b) *No smoking*;
- (c) *Stop motor*. (Ord. of 12-11-72; Ord. of 9-26-05)

Sec. 13-7.8. Dry chemical extinguishing systems.

An automatic-operating dry chemical extinguishing system shall be installed at all self-service gasoline dispensing stations. The installation shall meet all the requirements of the National Fire Code Standard for dry chemical extinguishing systems. All installed systems shall be approved by the Chief of the Department, prior to operation of the station. (Ord. of 3-22-82; Ord. of 9-26-05)

ARTICLE VIII. SOLID, OIL AND GAS FUEL APPLIANCES

Sec. 13-8.1. Permit required.

No person shall install or allow to be installed any solid fuel burning appliance, gas fired equipment, or fuel storage tanks including but not necessarily limited to wood, coal, or gas burning stoves, ranges, cook stoves, furnaces, water heating units, free-standing fireplaces, combination wood and coal and oil-fired furnaces, or air conditioners without first receiving a permit for such installation from the inspection at City Hall. Such application for the permit shall describe the installation to be made, the premises upon which it is to be made, the name of the person making such installation, whether or not such installer is licensed by the Oil Burner Men's Licensing Board, or be a Maine licensed gas installer which ever is applicable. Such certification shall be in writing, signed by the owner of the premises upon which such equipment or tank is to be installed or by the person who shall make such installation. (Ord. of 10-1-79; Ord. of 9-26-05)

Sec. 13-8.2. Permit application; fee.

Application for permits, as required in section 13-8.1, shall be made on forms provided by the fire rescue department and shall be signed by the owner of the property or his authorized agent and shall be accompanied by the fee set forth in the Master Fee Schedule attached hereto as Appendix B. The permit shall be deemed to have been abandoned if the proposed work is not commenced within six months of the date of approval and thereafter diligently pursued to completion. (Ord. of 10-1-79; Ord. of 7-6-82; Ord. of 3-3-86; Ord. of 1-22-91; Ord. of 9-26-05)

Sec. 13-8.3. Inspection required; certificate of compliance.

Upon completion of such installation the applicant shall notify the Fire Prevention Bureau which shall, cause the installation to be inspected to assure compliance with all state and local statutes, ordinances and/or regulations. An inspector shall issue a permit as soon as practicable. No vented gas burning appliance; solid or oil-burning equipment or fuel storage tanks shall be operated for more than 4 days unless the installation has been inspected and approved in accordance with this section and a certificate of compliance executed by the fire prevention bureau. (Ord. of 10-1-79; Ord. of 2-24-97; Ord. of 9-26-05)

Sec. 13-8.4. Penalties.

It shall be a civil violation for any person, firm or corporation to install or alter any gas-burning appliance regulated by this article, or cause the same to be done, in conflict with this Code. The Fire Inspector, Chief of the Department, or a person designated by the Chief of the Department shall cause a notice of violation or order to be served on the person responsible for the installation or alteration, in violation of the provisions hereof, or in violation of a plan or of a detail statement made with the permit application. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

If the notice is not complied with promptly, the Fire Inspector, Chief of the Department, or a person designated by the Chief of the Department shall request that the city legal department institute the appropriate proceedings, in law or equity, to restrain, correct or abate such violation.

Such violations shall be punishable by a fine, as set forth in Section 1-8 of this Code, together with such injunctive relief or administrative remedies as may be available. (Ord. of 10-1-79; Ord. of 9-26-05)

Sec. 13-8.5. Unvented appliances.

The provisions of this ordinance also shall apply to unvented appliances that are used primarily for space heating.¹ (Ord. of 2-24-97; Ord. of 9-26-05)

Sec. 13-8.6. Applicability of regulations.

No certificate shall be required for the maintenance or use of any oil burning equipment or fuel storage tanks where such equipment or tank was installed prior to June 28, 1965. All such equipment and tanks shall conform to the standards set out in this article. (Ord. of 9-26-05)

Sec. 13-8.7. Standards generally.

No oil burning equipment, vented gas burning appliance and no fuel storage tank to be used in connection therewith shall be installed, maintained, altered or used in the City unless it shall conform to the standards established by the Oil Burner Men's Licensing Board, or a Maine Licensed Gas Installer, pursuant to the provisions of the State statutes, and with the standards herein prescribed, whichever shall be higher. The name of such installer shall be contained in the license application required by this article. (Ord. of 9-26-05)

Sec. 13-8.8. Chief to inspect, issue certificate.

After oil burning equipment or fuel storage tanks have been installed, and within forty-eight (48) hours after notice therefore from the applicant for the certificate, the Chief of the Department or a Fire Inspector shall inspect the same and the Chief of the Department shall issue such certificate upon being satisfied that such equipment and tank and the installation thereof complies with the requirements of this article. (Ord. of 9-26-05)

Sec. 13-8.9. Use forbidden without certificate.

No person shall use any oil burning equipment or fuel storage tanks used in connection therewith, or maintain the same for more than four (4) days after the installation of the name shall have been completed, unless a certificate for such equipment or tank shall be in effect. (Ord. of 4-26-05)

Sec. 13-8.10. Notice to installer to comply with standards.

¹ See N.F.P.A. 54 – unvented equipment.

If the equipment or tank regulated by this article should not comply with the standards set out in Section 13-8.7 hereof, the Chief of the Department should notify the installer and state where the installation does not meet the specifications of the standards.

The installer shall have seven (7) days after the date of notification to comply with the standards set out in Section 13-8.7 hereof. If, at the end of the specified time limit, the Chief of the Department shall determine that the installation is still in violation of the standards as set out in Section 13-8.7, he shall give written notice to the Oil Burner Men's Licensing Board that such equipment or tank does not conform to such standards. (Ord. of 9-26-05)

Sec. 13-8.11. Flashpoint for equipments.

No person shall use oil in any oil burning equipment in the city unless its flashpoint is not less than one hundred degrees (100) Fahrenheit, closed cup test. (Ord. of 9-26-05)

Sec. 13-8.12. Valve stems required in vertical position.

The thermal fire valve stems on oil burning equipment must be in a vertical position. (Ord. of 9-26-05)

Sec. 13-8.13. Proximity of thermal switch to blast tube.

The firomatic thermal switch on oil burning equipment shall not exceed a maximum of four (4) feet about the blast tube of the burner. (Ord. of 9-26-05)

Sec. 13-8.14. Volts for control circuits, ground conductor required.

All control circuits for oil burners and oil burner auxiliary equipment shall be one hundred twenty (120) volts maximum with one grounded conductors. (Ord. of 9-26-05)

ARTICLE IX. SPRINKLER SYSTEMS

Sec. 13-9.1. Authority and purpose.

This ordinance enacted pursuant to 30-A M.R.S.A. Sec. 3001 and 30-A M.R.S.A Sec. 3007(2) as a local building code and for the purpose of fulfilling the municipality's enforcement responsibilities pursuant to Title 25, Chapter 313 of the Maine Revised Statutes. (Ord. of 9-26-05)

Sec. 13-9.2. Definitions.

(a) "An Approved Automatic Sprinkler System" means a system installed in accordance with National Fire Protection Association Standards.

(b) "Approved Supervisory Alarm System" means a system which complies with the requirements of the City of Westbrook Ordinance Regulating Fire Detection, Suppression and Supervisory Alarm Systems adopted July 6, 1987, as such ordinance may be amended from time-to-time.

(c) "Building" means any structure having a roof supported by columns or walls and intended for the shelter, housing, use or enclosure of persons, animals or property. For purposes of determining when an approved automatic sprinkler system is required by this section, portions of buildings separated from other portions by a fire wall shall not be considered separate buildings.

(d) "Unit of Occupancy" means any interior space with defined boundaries described in a deed, lease, license or agreement in which a discreet business, commercial, office, service,

professional, institutional or industrial activity is conducted and which is separated from any other business, commercial, office, service, professional, institutional or industrial activity by interior or exterior walls. (Ord. of 5-18-09)

Sec. 13-9.3. Applicability - New Building Construction.

Except as provided in Section 13-9.8, an approved automatic sprinkler system shall be installed in all areas of all new buildings described in whole or in part by any of the following criteria:

- (a) Three or more stories in height; or
- (b) Forty or more feet in height; or
- (c) 100,000 cubic feet (Gross) or more in volume or 7,500 square feet or more in total floor area (Gross), whichever is greater; or
- (d) Multiple family or dwelling and/or lodging units which are attached to one another, whether vertically or horizontally, in a configuration of three or more units. Examples include, but are not limited to, multiplex housing, condominium units, garden apartments, town houses, attached dwellings, semi-detached dwellings, apartment houses, hotels, motels, boarding homes and lodging houses (Ord. of 7-6-87; Ord. of 1-25-99; Ord. of 9-26-05).

Sec. 13-9.4. Applicability - Existing Buildings.

Except as provided in Section 13-9.8, an approved automatic sprinkler system shall also be installed in any of the following circumstances:

(a) When an existing building is enlarged or the use group classification of the building is changed in whole or part, an approved automatic sprinkler system must be installed in the entire building if the building as a whole meets or after the proposed enlargement or change of use will meet any of the criteria listed in Section 13-9.3.

(b) When an existing building meeting any of the criteria listed in Section 13-9.3 is altered, renovated or otherwise internally improved, an Automatic Sprinkler system must be installed in the entire building if the total value of the alterations, renovations or other improvements of any existing building meeting the criteria of Section 13-9.3 are greater than fifty percent (50%) of the current building value as shown on the assessment records of the Tax Assessor of the City of Westbrook. For purposes of determining whether the total value of alterations, renovations or other improvements, the value shall be calculated from September 26, 2005 and shall include all alterations, renovations, or other improvements made since that date. The Burdenproperty owner, occupant or agent shall have the burden of proof to show that the claimed value of alterations, renovation or other improvements is accurate.

(c) When a new dwelling or lodging unit is created in or added to an existing building, an approved automatic sprinkler system must be installed in the entire building if, as a result of the creation of the new unit, the building as a whole will meet the criteria of Section 13-9.3(d).

(d) When any other applicable ordinance, code, regulation, rule of statute so requires, an approved automatic sprinkler system must be installed accordingly. (Ord. of 7-6-87; Ord. of 1-25-99)

Sec. 13-9.5. Additional requirements of sprinkler systems.

(a) An approved automatic sprinkler system shall be equipped with an approved supervisory alarm system which will transmit to an approved receiver. The determination of what systems and receivers are “approved” shall be made by the Fire Rescue Department.

(b) An approved automatic sprinkler system shall provide a 4-inch Storz Fire Department Connection. Exception: The size of the Fire Department Connection for Systems meeting the NFPA 13R or the NFPA 13D Standard shall be 2.5-inch NST thread with cap.

(c) An approved automatic sprinkler system shall include an evacuation alarm which will sound and be audible throughout the entire building when the sprinkler system is activated. An internal fire alarm system may be utilized to meet this requirement, provided it is interconnected to activation of the sprinkler system.

(d) Notwithstanding anything to the contrary in any other regulation, code or rule, an approved automatic sprinkler system shall provide sprinkler heads both above and below ceilings in all building spaces, including, without limitation, closets, stairwells, storage rooms, mechanical rooms and equipment rooms. (Ord. of 7-6-87; Ord. of 1-25-99).

(1) Exception: Sprinkler systems meeting the NFPA 13R or NFPA 13D Standard may have this requirement waived with the approval of the fire chief.

(2) Exception: Non-combustible voids fire stopped at a maximum 300 cu. ft. and only plenum rated utilities are used.

(e) A Key Box or Boxes may be required by the Chief of the Department or his designee. Location(s) to be determined by the Chief of the Department or his designee.

(f) Any new Sprinkler System installed or modification of an existing system will be accepted by the Chief of the Department or his designee prior to any work being started. (Ord. of 9-26-05)

Sec. 13-9.6. Maintenance of system required.

Occupied or unoccupied buildings or portions thereof having a sprinkler system in place, whether or not such system is required by this section, shall maintain all sprinklers and standpipe systems and all component parts in workable condition at all times, and it shall be unlawful for any owner or occupant or agent of either to reduce the effectiveness of the protection those systems provide. This section does not prevent the owner or occupant of a building from temporarily reducing or discontinuing the protection when necessary in order to conduct testing, repairs, alterations or additions to the system, provided that the testing, repairs, alterations or additions are done in such a way to avoid the creation of a safety hazard, and provided that the Westbrook Fire Department has been notified that the work will be done, informed of the time the system will be shut down and then notified when the system is put back on line. (Ord. of 7-6-87; Ord. of 1-25-99; Ord. of 9-26-05)

Sec. 13-9.7. Enforcement.

A person, firm or corporation who is the owner or has control or use of any building and who violated or permits or causes a violation of any of the provisions of this ordinance in such building commits a civil violation punishable pursuant to 30-A M.R.S.A. § 4452. The provisions of this article shall be enforced by the Chief of the Department or members of the Fire Rescue Department expressly designated by the Chief of the Department. (Ord. of 7-6-87; Ord. of 1-25-99; Ord. of 9-26-05)

Sec. 13-9.8. Exemption.

This article shall not apply to barns or greenhouses used for agriculture or horticulture, or open parking structures, as defined in the applicable NFPA code(s) that are in effect when the building permit issued. Parking garages that meet this exception shall be equipped with adequate standpipe systems, as required by the Chief of the Department. (Ord. of 1-25-99; Ord. of 11-4-02; Ord. of 9-26-05; Ord. of 5-18-09)

Chapter 14

FOOD AND FOOD HANDLERS

(Food and Food Handlers deleted. See [Chapter 20, Licenses & Permits](#))

Chapter 15

FOREST

Sec. 15-1. Title.

This chapter shall be known and may be cited as the "City Forest Ordinance of the City of Westbrook." (Ord. of 12-3-73)

Sec. 15-2. Purpose.

The purpose of this chapter shall be to provide open space areas in the city for recreation, timber harvesting, wildlife, watershed protection, scenic beauty, and affiliated educational uses. (Ord. of 12-3-73)

Sec. 15-3. Administration generally.

The recreation/conservation commission shall be responsible for the management of the city forest. All work done in the city forest shall be under the direct supervision of the city arborist. Matters requiring expenditure of city funds shall be approved by the city council in accordance with section 16 of the charter. (Ord. of 12-3-73)

Sec. 15-4. Right of commission to receive and administer gifts.

The recreation/conservation commission may receive gifts, including land rights and easements, in the name of the city for any of the purposes of this chapter, and administer the same, subject to the terms of the gift. (Ord. of 12-3-73)

Sec. 15-5. Procedure when purchasing land.

The recreation/conservation commission may recommend the acquisition of lands to be included in the city forest, said acquisition to be subject to approval of a two-thirds (2/3) vote of the city council, in accordance with Title 30 M.R.S.A. Section 3752. (Ord. of 12-3-73)

Sec. 15-6. Dedication of city-owned property.

(a) The recreation/conservation commission shall inventory property presently held by the city, recommending which parcels should be dedicated solely to the purposes of this chapter. Such recommendations shall be submitted to the planning board for a report.

(b) The report of the planning board, together with the recommendations of the recreation/conservation commission, will be considered by the city council in determining which parcels of city-owned property shall be dedicated to the city forest.

(c) Property so dedicated shall be designated by the assessor's office and shall be listed as such on a schedule, which shall become part of this chapter.

(d) Dedication shall be by a two-thirds (2/3) vote of the city council. (Ord. of 12-3-73)

Sec. 15-7. Removal of land in the city forest.

Parcels can be removed from the city forest designation only by a two-thirds (2/3) favorable vote of each of the following city boards: recreation/conservation commission, planning board, and city council. (Ord. of 12-3-73)

Sec. 15-8. Schedule of property dedicated to the Westbrook City Forest.

The schedule of property dedicated to the Westbrook City Forest is on file in the office of the city clerk. (Ord. of 12-3-73)

Chapter 16

GARBAGE AND RUBBISH¹

- Art. I.** [In General](#), §§ 16-1 – 16-29
- Art. II.** [Demolition Debris Site](#), §§ 16-30 – 16-37
- Art III.** [Solid Waste Flow Control](#), §§ 16-38 – 16-47
- Art IV.** [Commercial Garbage and Rubbish Collection in the Downtown Area](#),
§§ 16-48 – 16-55

ART. I. IN GENERAL

Sec. 16-1. Introduction.

The City of Westbrook provides residential refuse collection, including for recyclables, using automated collection vehicles and special collection containers. This collection system provides an efficient service, while reducing collection costs and minimizing employee injuries, litter, and customer complaints. This ordinance governs automated refuse collection in the city.

Sec. 16-2. Definitions.

For the purposes of this chapter, all words, except those specifically defined in this section, shall have their normal and customary meanings and such meanings as may be in common use in the field of sanitation, refuse disposal, recycling and demolition debris site management:

- (a) *Garbage* is that refuse consisting of organic materials, including decayed or spoiled food, resulting from the preparation of food, but the city shall exclude from the items it will collect and dispose of under this Article any medical waste or dead animals.
- (b) *Rubbish* is that refuse consisting of non-organic waste, including such materials as paper, cardboard, and plastics, tin and glass, furniture, appliances, universal waste, hazardous waste, but exclusive of such materials as wood, bricks, stone, iron and steel.
- (c) *Household garbage and rubbish* is that garbage and rubbish generated in residential premises.
- (d) *Commercial garbage and rubbish* is that garbage and rubbish generated by nonresidential users, as defined herein (*i.e.*, businesses, offices, industries, and multi-family dwellings (7 or more dwelling units), mobile home parks, and condominium developments. For the purposes of this definition, the size restriction for multi-family dwellings shall be per lot separately identified by the city assessor for tax assessment purposes, except for the following which are grandfathered: Prides Corner Condominiums, La Bella Villa, Everett Court, Saccarappa Place and Longfellow Oaks. The condominium associations of the respective complexes will assist the city in the management of the trash and recycling containers allocated to each complex.
- (e) *Commercial operator* shall mean any person who picks up or hauls refuse of any kind as a business or for compensation.

¹ **State law reference** – Public dumps, 30-A M.R.S.A., §§ 3351-3353.

- (f) *Alien waste* is any household garbage, rubbish or any other discarded refuse, solid waste or recyclable material that is generated or transported from outside the city of Westbrook.
- (g) *Recyclable Materials or Recyclables* mean non-commercial garbage or rubbish designated by the Director of Public Services (the “Director”), or his designee, as suitable for inclusion in the city’s recycling program. These items are as follows: newspaper, magazines, office paper, paperboard, cardboard, glass bottles, glass jars, #1--#7 plastics, aluminum cans, aluminum foil, tin cans, steel cans and milk and juice cartons. These items are subject to change and are in reference to the items accepted by the city’s container hauler and end disposal facility.

Sec. 16-3. Household garbage and rubbish collection.

The city shall establish a system of regular collection, subject to the requirements of this chapter, for all household garbage and rubbish and recyclables, all as defined herein. The city will not collect commercial garbage and rubbish, and such commercial garbage and refuse shall be removed from the premises and disposed of at the expense of the owner or occupant of such premises. The city shall not collect otherwise eligible waste from residences located on private ways unless it is brought to the intersection of the private way and a public way and otherwise complies with all other requirements of this Article. The Director is expressly granted the authority to issue rules or regulations governing the collection of containers on streets that are too narrow to allow for routine collection and for dead end streets where it is impractical for the collection trucks to service the containers.

Sec. 16-4. Containers.

The Public Services Department shall issue two (2) special collection containers, color-coded, to each residential dwelling unit receiving municipal trash collection services: one for its household refuse and one for its recyclables. Residents shall use only the special containers issued by the Department for disposing of their household refuse and recyclables. Materials placed in non-standard containers shall not be collected.

Each special container shall remain the sole property of the City of Westbrook and may not be moved to any other location. Each container issued by the city shall be approximately 65 gallons, which shall be the standard issue, but residents may request a smaller size for good cause shown, such as a physical handicap. Residents may appeal a decision of the Department on a request for a different size container to the Director of the Department.

Sec. 16-5 Container repair and replacement; stolen containers.

Residents shall be responsible for the proper use and security of their assigned containers; provided, however, that whenever this Article imposes a duty on a resident, that duty shall also be imposed on the property owner so that the city may look to either for compliance and for the imposition of any fines or other relief. If the container is damaged by the city’s collection equipment, the city shall repair or replace the container at its sole expense; otherwise, the resident must pay for the cost of necessary repairs or replacement; provided, the city shall pay for the first repair or replacement of a container at any dwelling unit (one per family regardless of property owner or head of household). The Director shall post the replacement cost on the city’s website and annually up-date that posting, which shall be conclusive on the cost of the replacement.

If a container is stolen, the resident must report the theft to the Public Services Department and to the Police Department and fill out any required police reports. Any person who removes a container from a residence may be prosecuted for theft of city property and may have his or her collection privileges suspended.

Sec. 16-6. Location of containers and time for setting out.

Except as otherwise expressly provided for by rules or regulations issued by the Director, for collection purposes, the containers must be placed at the curb before 7:00 a.m. on collection day with the arrows toward the street and the handles and wheels toward the residence. They may not be put out prior to 5 pm on the previous day and must be returned from the curb before the end of the collection day. The containers must not be placed closer than three (3) feet to any obstruction, such as a parked car, another container, utility pole, hydrant, tree or mailbox. Overhead clearance for trees, wires or other obstructions must be at least ten (10) feet. If containers are not placed properly at the curb as provided in this section, they will not be collected.

Sec. 16-7. Acceptable and unacceptable waste; collection refused; special or emergency handling.

Acceptable waste includes normal household refuse, including residential offal (not including medical waste or dead animals), household trash and kitchen waste. Unacceptable waste shall not be collected and must be disposed of properly by the resident.

Unacceptable waste includes, but is not limited to, leaf and yard waste; dirt; sod; concrete; rock; large appliances or furniture; televisions or other electronic equipment; computers; construction, remodeling or demolition debris; hazardous waste; commercial or industrial waste; medical waste; hazardous materials; mercury containing products, such as fluorescent lamps, ballast, thermometers, and thermostats; and liquid and flammable waste, such as non-latex paint, gasoline, diesel, oil, pesticides, herbicides and hot ashes.

No leaves or grass clippings shall be put out for the regular curbside collection. No leaves or grass clippings shall be raked onto any paved street or public right-of-way. All leaves and grass clippings shall be properly disposed of in a manner authorized by the Director (*i.e.*, composting area, or designated container.)

The city may refuse to collect any refuse which has been put out for collection in a manner which does not comply with the requirements of this chapter, the Director's rules and regulations or which exceeds 75 pounds gross weight. The owner of such refuse has the responsibility of disposing of it in a lawful manner. Any refuse which has spilled from containers or which has been pulled from containers by animals will not be picked up by the city, and the person placing such refuse out shall clean it up and dispose of it properly within eight (8) hours of the time of collection.

In addition, the Director is expressly authorized to issue rules and regulations governing any special or "emergency" situations," including affixing specially designated stickers on containers or other refuse to explain why they have not been collected, why further violations will result in penalties or, where an imminent threat to the health and welfare of the city, the neighbors or the

city's collection agent is posed, providing for immediate disposal by the city or its collection agent and imposition of a fee to cover the full costs of the same.

Sec. 16-8. Alien waste.

The deposit or disposal of any alien waste, as defined in Sec. 16-2(f) above, on any public or private way or property (in the latter case, where done without the permission of the land owner) in the city is prohibited and subject to fines as provided in Sec. 16-12 below.

Sec. 16-9. Overflow Materials.

Material that will not fit in the containers is defined as "overflow material" and shall not be collected. If material is packed so tightly into the containers that it prevents the container from emptying in the normal course of collection, or exceeds the weight limitation under Sec. 16-7 above, or prevents the cover from fully closing, such that materials fall out during the collection process, the containers shall not be collected, and the resident shall be responsible for collecting and lawfully disposing of it.

Sec. 16-10. Authority of Director of Public Services.

The Director may establish such further rules and regulations governing the collection of garbage, rubbish and recyclables not inconsistent with the provisions of this chapter as he deems necessary including, without limitation, suspension of collection privileges, provided, that any such rule or regulation involving suspension of collection privileges must include a provision for a timely appeal to the Mayor or his designee. Any such rules and regulations shall be in writing, posted on the city's website and paper copies placed on file in the Director's office and the city clerk's office.

Sec. 16-11. Holidays; inclement weather.

If the Christmas, New Year's, Thanksgiving or Fourth of July holiday falls on the scheduled collection day for a collection zone or severe winter or other inclement weather conditions cause cancellation of the regular collection day, the refuse from that zone will be collected on the next day following that holiday or inclement weather day. Trash collection for the remainder of the week in which the holiday or weather cancellation day has fallen will occur on the day following (including Saturdays) its regularly scheduled day for collection.

Sec. 16-12. Violations; penalty.

Any person found guilty of violating any of the provisions of this chapter, in addition to being subject to the revocation of permits or the suspension of collection rights, shall be subject to fines, injunctive relief and the award of attorney's fees as provided for by State statute for land use violations, as well as the general penalty provisions of Sec. 1-8 of this Code.

Sec. 16-13. Applicability Date.

This Article shall become applicable on October 5, 2009, or such later date as the Director may designate.

Secs. 16-14 -- 16-29. Reserved.

(Ord. of 7-6-09)

ARTICLE II. DEMOLITION DEBRIS SITE

Sec. 16-30. Applicability.

The following rules and regulations are hereby established for the use of the demolition debris site for refuse disposal to be known as Rocky Hill. (Ord. of 8-20-79; Ord. of 11-2-92)

Sec. 16-31. Director to supervise; duties of attendant.

(a) The demolition debris site shall be under the direction and supervision of the director of public works, who may establish such further rules and regulations governing the collection of garbage and rubbish not inconsistent with the provisions of this chapter as he deems necessary.

(b) The attendants at the demolition debris site shall designate the areas for deposit of refuse and may prohibit the deposit of refuse which does not conform to the requirements of this chapter. They shall be subject to the direction of the director of public works. The attendants shall be sworn in as constables for the purpose of enforcing the provisions of this chapter. (Ord. of 8-20-79; Ord. of 4-1-91; Ord. of 11-2-92)

Sec. 16-32. Hours of operation; holidays.

(a) The Methodist Road site, Rocky Hill Park, shall be open to the public on those hours specified by the mayor and as posted on the premises at his direction. Rocky Hill may be closed temporarily by the mayor or in his absence the director of public works because of adverse whether or emergency conditions.

(b) Rocky Hill shall be closed on the following holidays: New Year's Day, Martin Luther King Jr., Day, Washington's Birthday, Patriots' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving Day, Veterans' Day, and Christmas, and any other holiday declared by the mayor.

(c) The depositing of refuse at the demolition debris site shall be limited to the hours of operation during which hours an attendant shall be present. When there is no attendant in charge, the area shall be closed with a locked chain or gate. (Ord. of 8-20-79; Ord. of 11-2-92)

Sec. 16-33. Items allowed for deposit at the demolition debris site.

(a) The following items shall be separated and deposited in the appropriate area by the user before or upon entering the disposal area:

- (1) Landfill Material/Demolition Debris. Cement, bricks, rocks, dirt, shingles, mattresses, couches, stuffed furniture, carpet, underlayment, sheet-rock, plaster, stumps, unburnable wood as determined by attendant, toilets, sinks, sawdust, wood chips, and TVs.
- (2) Burnable Material. All wood, brush, etc., with the exception of wood larger than three (3) inches in diameter or wood as determined by the attendant as unburnable.
- (3) Metals. All metals and objects of large bulk and heavy items, such as stoves, refrigerators, washing machines, etc.
- (4) Tires. Automobile tires and truck tires. (No loader tires.)

(b) The following items will not be accepted at the Rocky Hill site:

- (1) Cardboard, paper, plastic, and household trash, i.e. garbage and items acceptable as curbside pick-up.
- (2) Dead animals or animal manure of any kind.

- (3) Contents of cesspools or septic tanks.
- (4) Explosives or other volatile materials or any chemical or waste found hazardous by any federal or state agencies.
- (5) Hot coals or ashes.
- (6) Motor vehicle, trailer and construction equipment bodies.
- (7) Any material which the attendant, because of character or quality, considers hazardous or detrimental to the efficient and sanitary operation of the area.
- (8) Any refuse or material collected from premises outside of the city.

(c) Fill materials will be accepted at the demolition debris site in any quantity not inconsistent with these rules and regulations without payment of any fee, provided there is a current need for same as determined by the director of public works or his designated representative. If no need exists or loads are mixed and contain refuse as well as acceptable fill, such material shall be classified as refuse and accepted in accordance with the schedule of fees. (Ord. of 8-20-79; Ord. of 11-2-92)

Sec. 16-34. Permits; fees; revocation.

(a) *Residential permits.* The city clerk shall issue, upon receipt of the annual fee set forth in the Master Fee Schedule attached hereto as Appendix B, a permit for admittance to the demolition debris site to city residents. These permits shall be valid only for that vehicle, the registration numbers of which are listed on the permit, and shall be affixed to and displayed on that vehicle. No vehicle failing to display a permit shall be admitted to the demolition debris site. These permits shall be color coded so as to be easily identifiable.

(b) **Commercial Haulers deleted.** See [Chapter 20, Licenses & Permits](#)).

(c) *Per load fees for commercial operators.* The fees set forth in the Master Fee Schedule attached hereto as Appendix B shall be charged for per load commercial use of the demolition debris site. Payment shall be made with coupons purchased in advance from the city clerk, except that persons who deposit three (3) or more loads per week may make arrangements to pay on a monthly basis. Failure to make required payments within thirty (30) days from the date of billing will result in the suspension of all permits issued to that person until such bill is paid in full. The director of public works shall be furnished with a monthly report on all accounts. No cash will be accepted by the attendants at the demolition debris site.

The attendant shall determine whether the vehicle entering the demolition debris site contains a full or partial load and the fees will be adjusted accordingly.

(d) *Revocation:*

- (1) Residential permits shall be revoked when the holder thereof ceases to be a city resident.
- (2) The director of public works may suspend or revoke the permit of any person found violating any of the provisions of this chapter after notice to that person and an opportunity to rebut the evidence of such violation.
- (3) Any person whose permit has been suspended or revoked by the director of public works may, within thirty (30) days of the notice of said action, appeal in writing to

the municipal officers who may after public hearing affirm, reverse or modify the action of the director.

(e) *Penalty*: The fine for dumping without a permit shall be as set forth in the Master Fine Schedule attached hereto as Appendix C. (Ord. of 8-20-79; Ord. of 9-24-79; Ord. of 7-6-82; Ord. of 4-16-84; Ord. of 2-3-86; Ord. of 3-6-89; Ord. of 4-1-91; Ord. of 4-16-91; Ord. of 11-2-92; Ord. of 11-25-02)

Sec. 16-35. Refuse to be secured on transporting vehicles.

All refuse must be fastened, secured, confined, covered or loaded on transporting vehicles to prevent any portion thereof from falling to the ground prior to it being deposited where designated by the attendant at the demolition debris site. (Ord. of 8-20-79; Ord. of 11-2-92)

Sec. 16-36. Burning, smoking prohibited.

The burning of refuse or kindling of any fires in the demolition debris site is prohibited, except in designated areas. (Ord. of 8-20-79; Ord. of 11-2-92)

Sec. 16-37. Children, pets to be in vehicle while in areas.

No pets or children under the age of twelve (12) years shall go upon or be permitted within the demolition debris site except while in the confines of a motor vehicle. (Ord. of 8-20-79; Ord. of 11-2-92)

ARTICLE III. SOLID WASTE FLOW CONTROL

Sec. 16-38. Purpose.

The purpose of this article is to protect the health, safety, and general welfare of the citizens; to enhance and maintain the quality of the environment; to conserve natural resources and to prevent water and air pollution; to gain management control over solid waste; and to enable the reclamation of natural resources, including energy, from solid wastes by providing for a comprehensive, rational and effective means of regulating the disposal of solid waste generated in the city. The regulations set forth herein are intended to regulate the stream of acceptable wastes within the city and to be delivered directly or through the city's transfer station to the energy recovery facility, as defined herein. Nonacceptable wastes, as defined herein, are regulated by other provisions of the city's ordinances and shall be disposed of in accordance with them. (Ord. of 3-7-88)

Sec. 16-39. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Acceptable waste. All solid wastes generated within the city of the type accepted at the Sandy Hill municipal landfill prior to the adoption of this article, including ordinary household, municipal, institutional, commercial and industrial wastes, with the following exceptions:

- (1) Demolition or construction debris, including tree stumps.
- (2) Liquid wastes or sludges, including waste oil and water treatment residues.
- (3) Hazardous, infectious, or pathological wastes, including dead animals or portions thereof and those wastes generated by hospitals, health care facilities, and laboratories, as defined in the Standard Industrial Classification Manual.

- (4) Discarded "white goods," such as refrigerators and stoves, and furniture containing metal frames and springs.
- (5) Abandoned or junked vehicles.
- (6) Wastes averaging less than four thousand (4,000) Btu's per pound.
- (7) Those wastes which the public works authority determines are unsuitable for processing at the energy recovery facility.

Collection facility. A building, container, or designated area in which acceptable waste is deposited and temporarily stored for shipment to the energy recovery facility.

Disposal. The discharge, deposit, dumping or placing of any solid waste into or on any land.

Energy recovery facility. The facility designated herein which processes and recovers energy and/or useful materials from acceptable waste generated within the city.

Hazardous waste. Waste with inherent properties that make it dangerous to manage by ordinary means, including, but not limited to, chemicals, explosives, pathological wastes, radioactive, toxic, or other wastes defined as hazardous by the state, by the Resource Conservation and Recovery Act of 1976, as amended, and by any other federal, state, or local law, order, or regulation promulgated with respect thereto.

Resource recovery. The recovery of materials and substances that still have useful physical or chemical properties after serving a specific purpose and which can be reused or recycled for the same or other purposes.

Solid waste. Unwanted, useless, or discarded solid materials with insufficient liquid content to be free-flowing, including rubbish, garbage, scrap materials, junk, refuse, but not including septic tank sludge. (Ord. of 3-7-88)

Sec. 16-40. Designation of energy recovery facility.

Reserved. (Ord. of 3-7-88; Ord. of 2-19-91; Ord. of 7-6-09)

Sec. 16-41. Regulated activity.

The accumulation, collection, transportation, and disposal of acceptable waste generated within the municipality shall be deposited at the collection facility or directly at the energy recovery facility. (Ord. of 3-7-88)

Sec. 16-42. Exempted waste.

The following categories of waste shall be exempted from regulation by this article:

- (1) Glass, metal, or other non-combustible materials which are separated from acceptable waste by the generator as part of a recycling program.
- (2) Materials from manufacturing, processing, or packaging operations which are segregated from solid waste and salvaged for alternate use or reuse by the generator or sold to third parties.
- (3) Cardboard, paper, or other combustible materials which are separated from acceptable waste by the generator as part of a recycling program approved by the municipal officers, provided that any such recycling program shall not reduce the Btu content of acceptable waste below the level acceptable to the energy recovery facility. (Ord. of 3-7-88)

Sec. 16-43. Administration.

This article shall be administered by the municipal officers whose powers and duties shall include the following:

- (1) The authority to adopt reasonable rules and regulations as needed to enforce this article.
- (2) The authority to enter contracts for the use of collection and disposal facilities, subject to contractual obligations to the energy recovery facility.
- (3) The authority to review all license applications and to grant or deny approval.
- (4) The responsibility to review any alleged violation of this ordinance and to impose appropriate penalties therefor after notice and hearing, and to otherwise institute proceedings, either at law or equity, to enforce this article. (Ord. of 3-7-88)

Sec. 16-44. Licensing.

(a) *License required; exception.* No person, firm, or corporation shall collect, store, transport, or dispose of acceptable waste generated within the city without first obtaining an annual license from the city clerk, except for those collecting less than one ton per month of their own waste.

(b) *Application and fee.* Any person, firm, or corporation required by this article to obtain an annual license shall make application to the city clerk by January 1 of each year, providing the information required. The application shall be accompanied by the nonrefundable license fee set forth in the Master Fee Schedule attached hereto as Appendix B.

(c) *Contents of application.* The license application shall contain complete and current information required, including, but not limited to, a description of the activity engaged in; the type and amount of waste handled in each service area; a description of the facility operated or used; and an equipment inventory which includes each vehicle used in the collection of solid waste. The licensee shall have a continuing responsibility to notify the city immediately of any changes to this information.

(d) *Review of application.* Prior to the issuance or reissuance of any license, the city clerk shall refer the application to the director of public works for his review. All licenses issued pursuant to this chapter shall be subject to his approval.

(e) *Tipping fees.* Notwithstanding the payment of annual license fees, commercial licensees disposing of solid waste at the collection facility or the energy recovery facility, shall be subject also to payment of per-load "tipping fees." (Ord. of 3-7-88)

Sec. 16-45. Suspension or revocation of license - Causes.

Any license application may be denied, and any license issued may be suspended for thirty (30) days by the director of public works or may otherwise be suspended or revoked by order of the municipal officers, after benefit of a full hearing, for the following causes:

- (1) Violation of this article, e.g., disposal of wastes at an unapproved facility, knowingly or carelessly disposing of unacceptable waste at the collection facility or energy recovery facility, or unauthorized disposal of wastes from another municipality into the city facility.

- (2) Violation of any provision of federal, state, or other municipal law, ordinance, or regulation relating directly to the provisions of this article.
- (3) Violation of any license condition.
- (4) Falsehoods, misrepresentations, or omissions in the license application.
- (5) Failure to make timely payment of per-load charges. (Ord. of 3-7-88)

Sec. 16-46. Same - Hearings.

Upon the denial of a license application or upon the suspension or revocation of a license, the affected licensee shall be entitled to a hearing before the municipal officers if a request is made within thirty (30) days of such denial, suspension, or revocation. Such hearings shall be held within thirty (30) days after receipt of the request, at which time the licensee or applicant shall have the right to be represented by counsel, to offer evidence and argument, and to cross-examine witnesses.

A final written determination shall be issued within twenty (20) days after conclusion of the hearing. The notice shall set forth the reasons for the determination. Any controversy arising out of this decision by the municipal officers shall be reviewable directly by Superior Court, pursuant to M.R.C.P. Rule 80B. (Ord. of 3-7-88)

Sec. 16-47. Enforcement.

(a) *Generally.* The provisions of this article are enforceable by the director of public works or his representative, the code enforcement officer, and authorized law officers.

(b) *Violation; penalties.* Any person who violates any provision of this article commits a civil infraction, and is subject to the penalty provisions of section 1-8 of this Code, together with other civil and criminal sanctions available through state and federal law. Violators shall be liable also for the cost of any damage to disposal facilities or the costs of redispersing of wastes.

(c) *Conflicting provisions.* In the event this article is inconsistent with other ordinances, the provisions hereof shall apply. If any part is held to be invalid or unconstitutional by a court of law, such decision shall not affect the validity of the remaining provisions. (Ord. of 3-7-88)

**ARTICLE IV. COMMERCIAL GARBAGE AND RUBBISH
COLLECTION IN THE DOWNTOWN AREA**

Sec. 16-48. Applicability.

The provisions of this article shall apply to that area of the Downtown, where, due to the constraints of existing buildings located on small lots, it is difficult or impossible for a commercial use to locate a dumpster on private property in compliance with applicable setbacks and screening requirements. That area shall be as shown on the Pilot Business District for Curbside Collection Map, prepared by the Department of Engineering and Code Enforcement and dated June 12, 2014, a copy of which is on file in the Department of Engineering and Code Enforcement and in the City Clerk's Office. This article shall be limited to the collection of commercial garbage and rubbish, as defined in Section 16-2.

Sec. 16-49. Unacceptable waste prohibited.

Unacceptable waste, as described in Section 16-7, medical waste or dead animals shall not be disposed of under the provisions of this Article.

Sec. 16-50. Containers.

Commercial garbage and rubbish under this article shall be disposed of in containers that are provided by a commercial collector licensed under the provisions of article III of this Chapter. Such containers shall not be of the same colors as containers utilized for the collection of household garbage and rubbish or household recyclables. Containers shall not exceed ninety-six gallons in capacity.

Sec. 16-51. Collection of commercial garbage and rubbish.

Containers for commercial garbage and rubbish as established by Section 16-50 shall be collected at those locations in the City rights-of-way that are designated by the commercial waste hauler and approved in advance by the City.

Sec. 16-52. Times for collection.

Commercial garbage and rubbish collected under this article shall be placed in designated locations for pickup on those days established by the commercial collector. No container shall be placed in a designated collection location prior to 5:00 p.m. on the day immediately preceding the scheduled collection date or after 6:00 a.m. on the day of collection. All containers must be removed from the designated collection location no later than noon on the day of collection. The owner of a commercial establishment utilizing the collection provisions of this article shall be responsible for placement and removal of the containers within the times established by this Section.

Sec. 16-53. Responsibility for collection.

Arrangements for collection of commercial rubbish and garbage shall be made between the business and a collector licensed under the provisions of Section 16-44. The City shall have no responsibility for such collection, including the cost of such collection.

Sec. 16-54. Responsibility for containers.

The City shall not be responsible or liable for the loss of or any damage to containers placed within any City right-of-way.

Sec. 16-55. Enforcement.

(a) *Generally.* The provisions of this article are enforceable by the Director of Public Services, the code enforcement officer, and authorized law enforcement officials.

(b) *Violation; penalties.* Any person who violates any provision of this article or who fails to dispose of commercial garbage and rubbish either in compliance with this section or by means of a private dumpster that complies with all applicable provisions of this Code commits a civil violation and is subject to the penalty provisions of section 1-8 of this Code, together with other civil and criminal sanctions available through state and federal law. Violators shall be liable also for any costs

that may be incurred by the City, such as the costs of redisposing of wastes.

(Ord. of 8-4-14)

Chapter 17

HOUSING

- Art. I. [In General](#), §§ 17-1 – 17-20
- Art. II. [Enforcement](#), §§ 17-21 – 17-56
- Art. III. [Maintenance](#), §§ 17-57 – 17-74
- Art. IV. [Space, Use and Occupancy](#), §§ 17-75 – 17-89
- Art. V. [Light, Ventilation, Heating and Egress](#), §§ 17-90 – 17-108
- Art. VI. [Insect and Rodent Control](#), §§ 17-109 – 17-123
- Art. VII. [Garbage and Rubbish](#), §§ 17-124 – 17-140
- Art. VIII. [Plumbing](#), §§ 17-141 – 17-159
- Art. IX. [Rooming Houses](#), §§ 17-160 – 17-164
- Art. X. [Disorderly Houses](#), §§ 17-170 – 17-172

ARTICLE I. IN GENERAL

Sec. 17-1. Purpose.

This chapter is one establishing the minimum standards governing the conditions and maintenance of dwellings; establishing the minimum standards governing supplied utilities and facilities and other physical things and conditions essential to make dwellings safe, sanitary, and fit for human habitation; establishing the minimum standards governing the condition of dwellings offered for rent; fixing certain responsibilities and duties of owners and occupants of dwellings; authorizing the inspection of dwellings, and condemnation of dwellings unfit for human habitation; and fixing penalties for violation. (Ord. of 7-25-68)

Sec. 17-2. Insanitary conditions found.

Dwelling structures which are so dilapidated, unsafe, dangerous, unhygienic or unsanitary, and which constitute a menace to the health and safety of the people of Westbrook, have been found in the city. (Ord. of 7-25-68)

Sec. 17-3. General penalty.

Whenever in this chapter any act is prohibited or is made or declared to be unlawful or a misdemeanor, or whenever in this chapter the doing of an act is required or the failure to do any act is declared to be unlawful or a misdemeanor, where no specific penalty is provided therefor, the violation of such provision of this chapter shall be punished by the fine set forth in the Master Fine Schedule attached hereto as Appendix C. All fines shall be recovered on complaint to the use of the city. Each day any violation of any provision of this chapter shall continue shall constitute a separate offense.

Sec. 17-4. Definitions.

For the purposes of this chapter, the following terms, phrases and words shall have the meanings ascribed to them in this section.

Whenever the words "dwelling," "dwelling unit," "rooming house," "rooming unit," "premises," are used in this chapter, they shall be construed as though they were followed by the words "or any part thereof."

Basement shall mean that portion of a building next below the ground floor having not more than one-half (½) of its clear height below the adjoining grade.

Cellar shall mean that portion of a building next below the ground floor or basement having more than one-half (½) of its clear height below the adjoining grade.

Common staircase or passageway shall mean a passageway that serves two (2) or more dwelling units.

Dwelling shall mean any building which is wholly or partly used or intended to be used for living or sleeping by human occupants.

Dwelling unit shall mean any room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.

Extermination shall mean the control and elimination of insects, rodents or other pests by eliminating their harborage places; by removing or making inaccessible material that may serve as their food; by poisoning, spraying, fumigating or trapping; or by any other recognized and legal pest elimination methods approved by the housing inspector.

Garbage shall mean the animal and vegetable waste resulting from the handling, preparation, cooking and consumption of food.

Habitable room shall mean a room or enclosed floor space used or intended to be used for living, sleeping, cooking or eating purposes excluding bathrooms, water closet compartments, laundries, pantries, game rooms, foyers or communicating corridors and permanent built-in closets and storage spaces.

Housing inspector shall mean that person legally designated by the city as the housing inspector.

Infestation shall mean the presence or evidence of the presence, within or around a dwelling, of any insects, rodents or other pests.

Multiple dwelling shall mean any dwelling containing more than two (2) dwelling units.

Occupant shall mean any person over one (1) year of age who is living, sleeping, cooking or eating in, or having actual possession of, a dwelling unit or rooming unit.

Operator shall mean any person who has charge, care or control of a building, or part thereof, in which dwelling units or rooming units are let.

Ordinary winter conditions shall mean minus twenty degrees (20°) Fahrenheit.

Owner shall mean any person who alone, jointly or severally with others:

- (a) Shall have legal title to any dwelling or dwelling unit, with or without accompanying actual possession thereof;
- (b) Shall have charge, care or control of any dwelling or dwelling unit, as owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of

the owner. Any such person thus representing the actual owner shall be bound to the same extent as if he were the owner.

Person shall mean any individual, firm, corporation, association or partnership.

Plumbing shall mean all of the following supplies, facilities and equipment: Gas pipes, gas-burning equipment, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes washing machines together with all connections to water, sewer or gas lines.

Rooming house shall mean any dwelling or part of any building containing one (1) or more rooming units in which space is let by the owner or operator to four (4) or more persons who are not husband or wife, son or daughter, mother or father or sister or brother of the owner or operator.

Rooming unit shall mean any room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking or eating purposes.

Rubbish shall mean combustible and noncombustible waste materials except garbage; the term shall include, but not necessarily be limited to, the residue from the burning of wood, coal, coke and other combustible material, paper, rags, cartons, boxes, wood, excelsior, rubbish, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery, dust and others.

Supplied shall mean paid for, furnished, installed or provided by or under the control of the owner or operator.

Temporary housing shall mean any tent, trailer or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure or to any utilities system. (Ord. of 7-25-68, Ch. I, Art. I, §§ 1-23)

Sec. 17-5. Owners to maintain public areas of dwellings in sanitary manner.

Every owner of a dwelling containing two (2) or more dwelling units shall be responsible for maintaining in a clean and sanitary condition the shared or public areas of the dwelling and premises thereof. (Ord. of 7-25-68, Ch. I, Art. IX, § 1)

Sec. 17-6. Occupant's duty to maintain clean premises.

Every occupant of a dwelling or dwelling unit shall keep in a clean and sanitary condition that part of the dwelling, dwelling unit and premises thereof which he occupies and controls. (Ord. of 7-25-68, Ch. I, Art. IX, § 1)

Sec. 17-7. Owner required to provide screens.

The owner of a dwelling or dwelling unit shall be responsible for providing adequate screens, storm doors and windows wherever the same are required under the provisions of this chapter. (Ord. of 7-25-68, Ch. I, Art IX, § 2)

Sec. 17-8. Occupant's responsibility to install screens, storm doors and windows.

Every occupant of a dwelling or dwelling unit shall be responsible for hanging adequate screens, storm doors and windows whenever the same are required under the provisions of this chapter, except where the owner has agreed to supply such services. (Ord. of 7-25-68, Ch. I, Art. IX, § 3)

Sec. 17-9. Owner to insulate plumbing.

It shall be the duty of the owner to provide adequate insulation or other means of protection of all plumbing within a dwelling unit so as to prevent the plumbing from freezing under ordinary winter conditions. (Ord. of 7-25-68, Ch. I, Art. IX, § 4)

Sec. 17-10. Occupant's duty to maintain heat to prevent freezing of plumbing.

It shall be the duty of the occupant, when the landlord is not obliged to supply heat, to maintain adequate heat in the dwelling unit at all times to prevent the plumbing from freezing. (Ord. of 7-25-68, Ch. I, Art. IX, § 5)

Secs. 17-11 - 17-20. Reserved.

ARTICLE II. ENFORCEMENT

Sec. 17-21. Office of housing inspector.¹

The office of housing inspector, which is hereby established, shall be under the charge and direction of the code enforcement officer, who shall perform all the duties and functions of the housing inspector as herein provided. (Ord. of 2-21-77)

Sec. 17-22. Enforcement.

This chapter shall be enforced by the housing inspector. (Ord. of 7-25-68, Ch. I, Art. II, § 5)

Sec. 17-23. Housing inspector's authority to make inspections.

The housing inspector is hereby authorized and directed to make inspections to determine the condition of dwellings, dwelling units, rooming houses, rooming units and premises located within the city in order that he may perform his duty of safeguarding the health and safety of the occupants of such dwellings and of the general public. (Ord. of 7-25-68, Ch. I, Art. II, § 1)

Sec. 17-24. Inspector's authority to enter premises.

For the purpose of making an inspection authorized by the preceding section, the housing inspector is hereby authorized to enter, examine and survey at all reasonable times all dwellings, dwelling units, rooming houses, rooming units and premises. (Ord. of 7-25-68, Ch. I, Art. II, § 2)

Sec. 17-25. Owner to give free access to inspector.

The owner or occupant of every dwelling, dwelling unit or rooming unit, or the person in charge thereof, shall give the housing inspector free access to such dwelling, dwelling unit, rooming house or rooming unit and premises, at all reasonable times for the purpose of such inspection, examination and survey. (Ord. of 7-25-68, Ch. I, Art. II, § 3)

Sec. 17-26. Free access of owner to make repairs, alterations.

Every occupant of a dwelling, dwelling unit, rooming house or rooming unit shall give the owner thereof access to any part of such dwelling, dwelling unit, rooming house, rooming unit or premises at all times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this chapter or any lawful order issued pursuant to the provisions of this chapter. (Ord. of 7-25-68, Ch. I, Art. II, § 4)

Sec. 17-27. Notice of violation.

¹ **Charter reference** – Council's authority to establishment administrative officers and define their duties, § 30.

Whenever the housing inspector determines that there are reasonable grounds to believe that there has been a violation of any provisions of this chapter, he shall give notice, as hereinafter provided, of such alleged violation to the person responsible.

Such notice shall:

- (a) Be in writing.
- (b) Include a statement of the reasons why it is being issued.
- (c) Allow a reasonable time for the performance of any act it requires.
- (d) Be served upon the owner or occupant as the case may require. Such notice shall be deemed to be properly served upon such owner or occupant if a copy thereof is sent by registered mail to his last known address, if a copy thereof is posted in a conspicuous place in or about the dwelling affected by the notice or if he is served with such notice by any other method authorized or required under the laws of the city.

Such notices may contain an outline of remedial action which, if taken, will effect compliance with provisions of this chapter. (Ord. of 7-25-68, Ch. I, Art. XII, § 1)

Sec. 17-28. Method of petitioning for hearing.

Any person affected by any notice which has been issued in connection with the enforcement of any provisions of this chapter, may request and shall be granted a hearing on the matter before the housing inspector: Provided that such person shall file in the office of the housing inspector a written petition requesting such hearing and setting forth a brief statement of the grounds therefor within ten (10) days after the day the notice was served.

Upon receipt of such petition, the housing inspector shall set a time and place for such hearing and shall give the petitioner notice thereof in the manner prescribed in subsection (d) of the preceding section. The hearing shall be commenced not later than ten (10) days after the day on which the petition was filed: Provided that upon application of the petitioner, the housing inspector may postpone the date of the hearing for a reasonable time beyond such ten (10) day period, if in his judgment, the petitioner has submitted a good and sufficient reason for such postponement.

At such hearing, the petitioner shall be given an opportunity to be heard and to show why such notice should be modified or withdrawn. (Ord. of 7-25-68, Ch. I, Art. XII, § 2)

Sec. 17-29. Inspector's power to sustain, modify, withdraw notice; action deemed an order.

After a hearing in accordance with the provisions of this article, the housing inspector shall sustain, modify or withdraw the notice required by section 17-27, depending upon his findings as to the compliance with the provisions of this chapter.

If the housing inspector sustains or modifies such notice, it shall be deemed to be an order.

Any notice served pursuant to section 17-27 of this article shall automatically become an order if a written petition for a hearing is not filed in the office of the housing inspector within ten (10) days after such notice is served. (Ord. of 7-25-68, Ch. I, Art. XII, § 3)

Sec. 17-30. Record of public hearings to be kept.

The proceedings at hearings, provided by this article, including the findings and decision of the housing inspector, shall be summarized, reduced to writing and entered as a matter of public record in the office of the housing inspector.

Such record shall also include a copy of every notice order issued in connection with the matter. (Ord. of 7-25-68, Ch. I, Art. XII, § 4)

Sec. 17-31. Restriction on disposal of property subject to order; penalty.

It shall be unlawful for the owner of any dwelling, dwelling unit, rooming house, rooming unit and premises against which any lawful order has been issued by the housing inspector to sell, transfer or otherwise dispose thereof to another, unless he shall first furnish to grantee prior to transfer thereof, a true copy of any order issued by the inspector and at the same time notify the inspector in writing of the intent to transfer either by delivering such notice to the inspector and receiving a receipt therefor, or by registered mail, return receipt requested, giving the name and address of the person to whom the transfer is proposed.

In the event of any violation of the terms of this section, the grantor shall be subject to the penalty provisions of section 17-3. (Ord. of 7-25-68, Ch. I, Art. XII, § 5)

Sec. 17-32. Placarding authorized; procedure.

If a person affected by a decision of the housing inspector fails to appeal to the zoning board of appeals or if after an appeal, the board sustains the decision of the inspector, the dwelling, dwelling unit, rooming house, or rooming unit so affected may be declared unfit for human habitation and placarded by the housing inspector.

To placard, the inspector shall issue to the occupants and the owner or operator a written notice to vacate the premises within such time as the inspector may deem reasonable, and a placard prohibiting continued occupancy or reoccupancy may be conspicuously posted on the premises. (Ord. of 7-25-68, Ch. I, Art. XII, § 7; Ord. of 8-24-81)

Sec. 17-33. Defects warranting placarding.

Any dwelling, dwelling unit, rooming house or rooming unit which is found to have any of the following defects may be so designated and placarded by the housing inspector:

- (a) *Deteriorated, broken or damaged portions of dwellings, etc.:* The interior or exterior walls, foundation, doors, windows, floors, stairs, roof or any other portions of any dwelling, dwelling unit, rooming house or rooming unit are so deteriorated, broken, damaged or in such a state of disrepair to cause conditions detrimental to life and health.
- (b) *Lack of toilet facilities:* A lack of toilet facilities whereby a nuisance or a health hazard is created.
- (c) *Plumbing inadequacies:* The plumbing, plumbing fixtures, septic tanks or other waste disposal facilities are in such a condition to create a nuisance or a health hazard.
- (d) *Overcrowding :* Serious or dangerous overcrowding of persons in sleeping rooms or space whereby a hazard to health is created.
- (e) *Rodent or vermin infestation:* Rodent or vermin infestation within the building which may result in contamination of food or other health hazards.
- (f) *Lack of adequate water supply:* No adequate water supply is available or the available supply is subject to such contamination as may cause a health hazard.
- (g) *Infectious or communicable disease:* An infectious or communicable disease exists therein and as a result thereof reasonable isolation and disinfection procedures cannot be followed due to lack of sanitary facilities or overcrowding.

- (h) *Heating inadequacies*: No adequate heating facilities are available or maintained, or proper heating is not supplied.
- (i) *Other conditions*: Other conditions which are or may become detrimental to health. (Ord. of 7-25-68, Ch. I, Art. XIII, § 1-1.9)

Sec. 17-34. Use of placarded buildings regulated; removal of placard.

No dwelling or dwelling unit, rooming house or rooming unit which has been placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from, and such placard is removed by the housing inspector.

The inspector shall remove such placard whenever the defect upon which the placarding action was based on or has been eliminated. (Ord. of 7-25-68, Ch. I, Art. XII, § 7.1)

Sec. 17-35. Defacing, unauthorized removal of placards.

No person shall deface or remove the placard from any dwelling or dwelling unit, rooming house or rooming unit, which has been declared unfit for human habitation and placarded as such. (Ord. of 7-25-68, Ch. I, Art. XII, § 7.2)

Sec. 17-36. Authority to vacate premises, placard upon refusal.

In instances where the housing inspector determines that extreme danger or menace to the occupants or the public health exists, the inspector may order immediate correction to be made or, if the circumstances warrant, may order the vacating of the occupants.

If any person so notified, neglects or refuses to comply with an order of the inspector, the inspector may then declare the premises unfit for human habitation by issuing to the occupants and the owner or operator a written order to vacate the premises within such time as he may deem reasonable, and a placard prohibiting continued occupancy or reoccupancy may be conspicuously posted on the premises. (Ord. of 7-25-68, Ch. I, Art. XII, § 8)

Sec. 17-37. Appeal of inspector's decision.

Any person aggrieved by an order of the housing inspector may file an appeal within ten (10) days from the date of such order to the zoning board of appeals who may, by a majority vote of its entire membership, reverse the decision of the housing inspector and permit exceptions to or variations from the specific terms of this chapter in such cases where the enforcement of the provisions of this chapter may result in undue hardship, subject always to the rule that the board shall give due consideration to the purposes of this chapter in promoting health, safety, and general welfare. (Ord. of 7-25-68, Ch. I, Art. XII, § 6; Ord. of 8-24-81)

Secs. 17-38 - 17-56. Reserved.

ARTICLE III. MAINTENANCE

Sec. 17-57. Safe and sanitary maintenance required.

No person shall occupy as owner or let to another for occupancy any dwelling or dwelling unit for the purpose of living therein which does not comply with the following requirements relating to the safe and sanitary maintenance of parts of dwellings and dwelling units. (Ord. of 7-25-68, Ch. I, Art. VII, § 1)

Sec. 17-58. Weatherproofing, rodentproofing, repairs required.

Every foundation, floor, wall, ceiling, and roof shall be reasonably weathertight and rodentproof; shall be capable of affording privacy; and shall be kept in good repair.

Every window, exterior door, and basement hatchway shall be reasonably weathertight, and rodentproof, and shall be kept in sound working condition and good repair. (Ord. of 7-25-68, Ch. I, Art. VII, § 1.1)

Sec. 17-59. Stairs, porches; general construction standards.

Every inside and outside stair, every porch and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon and shall be kept in sound condition and good repair. (Ord. of 7-25-68, Ch. I, Art. VII, § 1.2)

Sec. 17-60. Handrails required.

Every stairway four (4) feet or more in height shall have a safe and proper handrail. (Ord. of 7-25-68, Ch. I, Art. VII, § 1.2.1)

Sec. 17-61. Railings, parapets required; proper balustrading.

Railings or parapets shall be provided around porches that are higher than thirty (30) inches above ground level, balconies, roofs used for egress or tenancy purposes or similar places.

Such protective railings or parapets shall be properly balustraded and be not less than three (3) feet in height. (Ord. of 7-25-68, Ch. I, Art. VII, § 1.2.2)

Sec. 13-62. Construction of bathroom, water closet floors.

Every water closet compartment floor surface and bathroom floor surface shall be constructed and maintained so as to be reasonably impervious to water and so as to permit such floor to be easily kept in a clean and sanitary condition. (Ord. of 7-25-68, Ch. Art. VII, § 1.3)

Sec. 17-63. Unauthorized removal, discontinuance of required services, utilities, etc.

No owner, operator, or occupant shall cause any service, facility, equipment, or utility which is required under this chapter, to be removed from or shut off from or discontinued from any occupied dwelling let or occupied by him, except for such temporary interruption as may be necessary while actual repairs or alterations are in process, or during temporary emergencies when discontinuance of service is approved by the housing inspector. (Ord. of 7-25-68, Ch. I, Art. VII, § 1.4)

Sec. 17-64. Dwelling units to be clean before letting.

No owner shall occupy or let to any other occupant any vacant dwelling unit unless it is clean, sanitary and fit for human occupancy. (Ord. of 7-25-68, Ch. I, Art. VII, § 1.5)

Sec. 17-65. Pumping of basements, fee.

The city shall charge the fee set forth in the Master Fine Schedule attached hereto as Appendix C for the third and successive requests by the owner or occupant for the pumping of the basement or other areas of a dwelling by any city department. (Ord. of 4-7-86)

Secs. 17-66 - 17-74. Reserved.

ARTICLE IV. SPACE, USE AND OCCUPANCY

Sec. 17-75. Compliance required.

No person shall occupy or let to another for occupancy any dwelling unit, for the purpose of living therein, which does not comply with the requirements for space, use and occupancy enumerated in this article. (Ord. of 7-25-68, Ch. I, Art. VI, § 1)

Sec. 17-76. Floor space requirements.

Every dwelling unit shall contain at least one hundred (100) square feet of floor area per occupant.

Every sleeping room used for sleeping purposes shall contain a minimum of seventy (70) square feet of floor area and at least fifty (50) square feet of floor area per person with all measurements based on the total habitable room area; provided that the occupancy of any dwelling unit having more than one (1) habitable room shall not exceed an average of one and one-half (1½) persons per habitable room; and provided further that for the purposes of this section, a child under ten (10) years of age shall be deemed to be one-half (½) person. (Ord. of 7-25-68, Ch. I, Art. VI, § 1.1)

Sec. 17-77. Ceiling height requirements.

At least one-half (½) of the floor area of every habitable room shall have a ceiling height of at least seven (7) feet; and the floor area of that part of any room where the ceiling height is less than five (5) feet shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof. (Ord. of 7-25-68, Ch. I, Art. VI, § 1.2)

Sec. 17-78. Use of basement as habitable room or dwelling unit.

No basement or cellar space shall be used as a habitable room or dwelling unit unless the floors and walls are free from chronic dampness and protected from surface runoff, have adequate ventilation and egress. (Ord. of 7-25-68, Ch. I, Art. VI, § 1.3)

Sec. 17-79. Inspector's approval for temporary housing.

No temporary housing shall be used without the written permission of the housing inspector. (Ord. of 7-25-68, Ch. I, Art. VI, § 1.4)

Secs. 17-80 - 17-89. Reserved.**ARTICLE V. LIGHT, VENTILATION, HEATING AND EGRESS¹****Sec. 17-90. Compliance with regulations required.**

No person shall occupy as owner or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the requirements enumerated in this article. (Ord. of 7-25-68, Ch. I, Art. V, § 1)

Sec. 17-91. Minimum window and skylight areas.

Every habitable room shall have at least one (1) window or skylight facing directly to the outdoors.

The minimum total window or skylight area of any habitable room shall be ten percent (10%) of the floor area of any such room.

¹ **State law reference** – Municipal authority to regulate light and ventilation of all buildings, 30-A M.R.S.A. § 3007.

Whenever walls or other portions of structures face a window of any such room and such light obstruction structures are located less than three (3) feet from the window and extend to a level above that of the window of the room, such a window shall not be deemed to face directly to the outdoors and shall not be included as contributing to the required minimum total window area.

Whenever the only window in a room is a skylight-type window in the top of such room, the total window area of such skylight shall equal fifteen per cent (15%) of the total floor area of such room. (Ord. of 7-25-68, Ch. I, Art. V, § 11)

Sec. 17-92. Openable window area.

Every habitable room shall have at least one (1) window or skylight which can be easily opened.

The total openable window area in every habitable room shall be equal to at least fifty percent (50%) of the minimum window area or minimum skylight area, as required in preceding section 17-91, except where there is supplied some other device affording adequate ventilation and approved by the housing inspector. (Ord. of 7-25-68, Ch. I, Art. V, § 1.2)

Sec. 17-93. Light, ventilation requirements for bathrooms, water closets.

Every bathroom and water closet compartment shall be well lighted and ventilated.

Three (3) foot candles of light (three (3) lumens per square foot) shall be provided by either natural or artificial means and shall be available at all times. Such light shall be measured thirty-six (36) inches from the floor at the center of the room.

Every bathroom and water closet compartment shall have at least one (1) window or skylight which can be easily opened.

The total openable window area shall be equal to at least fifty percent (50%) of the minimum window area or minimum skylight area as required in section 17-91 of these minimum standards. The window area requirements of this section may be waived provided that there is an installed mechanical ventilation system approved by the housing inspector. (Ord. of 7-25-68, Ch. I, Art. V, § 1.3)

Sec. 17-94. Electric outlets required; installation; temporary wiring restricted.

Where there is electric service available from power lines which are not more than three hundred (300) feet away from a dwelling, every habitable room shall contain at least two (2) separate wall type electric convenience outlets, or one (1) such convenience outlet and one (1) ceiling type or wall type electric light fixture.

Every such outlet and fixture shall be properly installed, shall be maintained in good safe working condition and shall be connected to the source of electric power in accordance with the National Board of Fire Underwriters Code.

No temporary wiring shall be used except extension cords which run directly from portable electric fixtures to convenience outlets, and which do not lie under rugs, or other floor coverings, nor extend through doorways, transoms, or other openings through structural elements. (Ord. of 7-25-68, Ch. I, Art. V, § 1.4)

Sec. 17-95. Passageway lighting required.

Every portion of any common passageway or staircase in a building used for human habitation shall be illuminated naturally or artificially at all times with an illumination of at least two (2) foot candles (two (2) lumens per square foot) in the darkest portion of the normally traveled stairs and passageways.

Such means of illumination in dwellings of three (3) dwelling units or less with a common passageway may be controlled by switches that may be turned on as needed. (Ord. of 7-25-68, Ch. I, Art. V, § 1.5)

Sec. 17-96. Heating equipment required; standards.

Every dwelling unit shall have heat generating equipment properly installed and capable of safely heating all rooms except those used exclusively for sleeping purposes to a temperature of at least seventy degrees (70°) Fahrenheit measured at a distance of thirty-six (36) inches above the floor level, under ordinary winter conditions.

The requirements of this paragraph shall not apply to dwelling units solely for seasonal occupancy during the months of March through October.

Heat supplied by the landlord shall conform to the above standards during cold weather. (Ord. of 7-25-68, Ch. I, Art. V, § 1.6)

Sec. 17-97. Proper venting of other than central heating systems.

When heat is not furnished by a central heating plant, each dwelling unit shall be provided with one (1) or more masonry flues and smoke or vent pipe connections or approved equal arrangement to vent satisfactory and safely any heating unit. (Ord. of 7-25-68, Ch. I, Art. V, § 1.7)

Sec. 17-98. Means of egress to be unobstructed.

Every means of egress from a dwelling unit shall be safe, unobstructed and accessible for all occupants. (Ord. of 7-25-68, Ch. Art. V, § 1.8)

Secs. 17-99 - 17-108. *Reserved.*

ARTICLE VI. INSECT AND RODENT CONTROL

Sec. 17-109. Dwellings to be free of insects, rodents.

Every dwelling shall be free from insects, rodents, or vermin. (Ord. of 7-25-68, Ch. I, Art. VIII, § 1)

Sec. 17-110. Authority to require extermination, proofing.

Rodent or vermin extermination and rodent proofing may be required by the housing inspector. (Ord. of 7-25-68, Ch. I, Art. VIII, § 1)

Sec. 17-111. Owner's responsibility for extermination.

Whenever infestation of vermin or rodents is caused by failure of the owner to maintain a dwelling in a rodent proof or reasonable insect-proof condition, the responsibility for extermination shall fall upon the owner.

Whenever infestation exists in two (2) or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling containing two (2) or more dwelling units, extermination thereof shall be the responsibility of the owner. (Ord. of 7-25-68, Ch. I, Art. VIII, § 2)

Sec. 17-112. Occupant's responsibility for extermination.

Every occupant of a dwelling containing a single dwelling unit shall be responsible for the extermination of any insects, rodents or other pests therein or on the premises. (Ord. of 7-25-68, Ch. I, Art. VIII, § 3)

Sec. 17-113. Screens required.

During that portion of each year when the housing inspector deems it necessary for protection against mosquitoes, flies, and other insects, every door opening from a dwelling unit to outdoor space shall have supplied screens and a self-closing device and every window or other device with openings to outdoor space, used for ventilation, shall likewise be supplied with screens.

In every basement or cellar at least one (1) window, and every opening used for ventilation, which might provide an entry for rodents, shall be supplied with a screen or such other device as will effectively prevent their entrance. (Ord. of 7-25-68, Ch. I, Art. VIII, § 4)

Secs. 17-114 – 17-123. Reserved.

ARTICLE VII. GARBAGE AND RUBBISH

Sec. 17-124. Garbage disposal units or containers required.

Every dwelling unit shall be supplied with adequate garbage disposal facilities or suitable watertight covered containers, whose type and location are approved by the housing inspector. (Ord. of 7-25-68, Ch. I, Art. IV, § 1)

Sec. 17-125. Rubbish containers required.

Every dwelling unit shall be provided with suitable and sufficient containers, whose type and location are approved by the housing inspector to receive the accumulation of rubbish and other nonperishable waste on the premises. (Ord. of 7-25-68, Ch. I, Art. IV, § 2)

Sec. 17-126. Occupant to furnish garbage, rubbish receptacles within unit.

It shall be the responsibility of an occupant of a dwelling unit to furnish such garbage and rubbish storage receptacles as are necessary within the dwelling unit. (Ord. of 7-25-68, Ch. I, Art. IV, § 3)

Sec. 17-127. Occupants to furnish receptacles outside of unit.

In dwellings with seven (7) or less dwelling units, it shall be the responsibility of the occupant of a dwelling unit to furnish such additional storage receptacles outside of the dwelling unit as are necessary for the storage of garbage and rubbish until removal from the premises. (Ord. of 7-25-68, Ch. I, Art. IV, § 4)

Sec. 17-128. Owner to provide receptacles outside units.

In dwellings containing eight (8) or more dwelling units, it shall be the responsibility of the owner to furnish such receptacles outside of the dwelling units as are necessary for the storage of garbage and rubbish until removal from the premises. (Ord. of 7-25-68, Ch. I, Art. IV, § 5)

Sec. 17-129. Disposal of garbage, rubbish generally.

Every occupant of a dwelling or dwelling unit shall dispose of all his garbage and rubbish in a clean and sanitary manner. (Ord. of 7-25-68, Ch. I, Art. IV, § 6)

Sec. 17-130. Dwellings to be free of refuse; inspector to remedy unsanitary conditions.

Every dwelling shall be clean and free from garbage or rubbish.

When a dwelling or dwelling unit is not reasonably clean or free from garbage or rubbish, the housing inspector may cause the responsible person to put the dwelling or dwelling unit in a clean and sanitary condition. (Ord. of 7-25-68, Ch. I, Art. IV, § 7)

Secs. 17-131 - 17-140. Reserved.

ARTICLE VIII. PLUMBING

Sec. 17-141. Compliance required.

No person shall occupy as owner or let to another for occupancy any dwelling or dwelling unit, for the purpose of living, sleeping, cooking, or eating therein, which does not comply with the requirements enumerated in this article. (Ord. of 7-25-68, Ch. I, Art. III, § 1)

Sec. 17-142. Installation and maintenance generally.

All plumbing regulated by the provisions of this article shall be properly installed and maintained in a good sanitary working condition, free from defects, leaks and obstruction. (Ord. of 7-25-68, Ch. I, Art. III, § 1.8)

Sec. 17-143. Continuous, ample supply of hot and cold water required.

Every kitchen sink, lavatory basin, and bathtub or shower required under the provisions of this article shall be properly connected to a continuous and ample supply of hot and cold water lines with adequate supply and pressure.

The hot water lines shall be connected with water-heating facilities which are capable of heating to such a temperature as to permit an adequate amount of hot water to be drawn at every required fixture at all reasonable times. (Ord. of 7-25-68, Ch. I, Art. III, § 1.4)

Sec. 17-144. Sewerage system required.

Where connection to a public sewer is not practicable, a dwelling unit shall be served by an underground water-borne sewerage treatment system approved by the housing inspector and maintained in a proper manner. (Ord. of 7-25-68, Ch. I, Art. III, § 1.7)

Sec. 17-145. Drains required.

Every sink, tub, shower, toilet, or other plumbing fixture in a building used for habitation shall be provided with a proper and unobstructed drain which discharges into a sewerage system outside the building, and said fixtures and drains shall be maintained by the owner in a sanitary working condition at all times. (Ord. of 7-25-68, Ch. I, Art. III, § 1.9)

Sec. 17-146. Kitchen sink required.

Every dwelling unit shall contain a kitchen sink in good working condition and properly connected to a water and sewerage system approved by the housing inspector. (Ord. of 7-25-68, Ch. I, Art. III, § 1.1)

Sec. 17-147. Bathtub or shower required.

Every dwelling unit shall contain, in a room which affords privacy, a bathtub or shower in good working condition and properly connected to a water and sewerage system approved by the housing inspector. (Ord. of 7-25-68, Ch. I, Art. III, § 1.3)

Sec. 17-148. Flush water closet, lavatory required.

Every dwelling unit shall contain, in a room which affords privacy, a flush water closet and a lavatory basin in good condition and properly connected to a water and sewerage system approved by the housing inspector. (Ord. of 7-25-68, Ch. I, Art. III, § 1.2)

Sec. 17-149. Water closet, bathtub to be accessible.

The water closet and bathtub or shower compartment for each dwelling unit shall be accessible from within the building without passing through any part of any other dwelling unit. (Ord. of 7-25-68, Ch. I, Art. III, § 1.5)

Sec. 17-150. Backwater valves required for floor drains.

All newly constructed dwellings with floor drains that are connected to the city's public sewer or storm drain system shall be equipped with an approved backwater valve before a certificate of occupancy shall be issued. All such backwater valves must comply with the provisions of the state plumbing code and shall be located where they will be readily and easily accessible for inspection and repair as required by said code. (Ord. of 1-15-79)

Secs. 17-151 - 17-159. Reserved.

ARTICLE IX. ROOMING HOUSES

Sec. 17-160. Compliance required.

No person shall operate a rooming house or shall occupy or let to another for occupancy any rooming unit in any rooming house which does not comply with the requirements of this article. (Ord. of 7-25-68, Ch. I, Art. X, § 1)

Sec. 17-161. Operator responsible for sanitary maintenance.

The operator of every rooming house shall be responsible for the sanitary maintenance of all walls, floors and ceilings, and for maintenance of a sanitary condition in every other part of the rooming house; and he shall further be responsible for the sanitary maintenance of the entire premises where the entire structure or the building is leased or occupied by the operator. (Ord. of 7-25-68, Ch. I, Art. X, § 1.4)

Sec. 17-162. Water closet, bath and shower requirements.

At least one (1) flush water closet and bathtub or shower, properly connected to a water and sewerage system approved by the housing inspector and in good working condition, shall be supplied for each eight (8) persons or fraction thereof residing within a rooming house, including members of the operator's family wherever they share the use of such facilities: Provided that in a rooming house where rooms are let only to males, flush urinals may be substituted for not more than one-half (½) the required number of water closets.

All such facilities shall be located within the dwelling as to be reasonably accessible from a common hall or passageway to all persons sharing such facilities.

Every lavatory basin and bathtub or shower shall be supplied with hot water at all times.

No such facilities shall be located in a basement except by written approval of the housing inspector. (Ord. of 7-25-68, Ch. I, Art. X, § 1.1)

Sec. 17-163. Floor space requirements for sleeping rooms.

Every room occupied for sleeping purposes by one (1) person shall contain at least seventy (70) square feet of floor space, and every room occupied for sleeping purposes by more than one

(1) person shall contain at least fifty (50) square feet of floor space for each occupant thereof. (Ord. of 7-25-68, Ch. I, Art. X, § 1.2)

Sec. 17-164. Supplied linen and towels; operator's responsibility.

The operator of every rooming house shall change supplied bed linen and towels therein at least once each week, and prior to letting of any room to any occupant.

The operator shall be responsible for the maintenance of all supplied bedding in a clean and sanitary manner. (Ord. of 725-68, Ch. I, Art. X, § 1.3)

ARTICLE X. DISORDERLY HOUSES

Sec. 17-170. Disorderly houses.

(a) No person shall occupy as owner-occupant or shall allow another to occupy any dwelling, dwelling unit, rooming house, or rooming unit (hereinafter jointly and severally "building") which is a disorderly house as defined herein.

(b) A "disorderly house" is any building which:

(1) The police have visited four (4) or more times in any thirty (30) day period in response to situations created by the owner, tenants, or tenants' cohabitees, guests or invitees and which have a tendency to disturb unreasonably the community, the neighborhood or an ordinary individual in the vicinity of said building through, but not limited to loud music; boisterous parties; sounds emanating from within the structure that are audible outside the building; loud noise or fights within the building or in its vicinity involving tenants of the building or their invitees (excluding incidents involving domestic violence); tenants or invitees of tenants being intoxicated on public ways in the immediate vicinity of the building; or other similar activities in the building or outside the building itself; or

(2) The police have visited two (2) or more times in any thirty (30) day period in response to situations which are created by the owner, tenants, or tenants' cohabitees, guests or invitees and involve the arrest and conviction of tenants or their invitees for activities which constitute either a crime or civil infraction under law, or create a reasonable suspicion that illegal drug use or sales under 17-A M.R.S.A. chapter 45 or prostitution or public indecency under 17-A M.R.S.A. chapter 35 has occurred.

(c) The situation to which the visit pertains shall be documented by the police department. Such documentation may include sworn affidavits by named citizens which may be sufficient to create a reasonable suspicion said illegal activity has occurred.

Sec. 17-171. Notice of disorderly houses.

(a) *Hot spots.* Whenever a building has been visited by the police in

response to a disturbance described in Sec. 7-170(b)(1) two (2) times, but less than four (4) times in any thirty (30) day period, or in response to activities that involve a criminal conviction or reasonable suspicion of criminal activity described in Sec. 7-170(b)(2), at least one (1) time in any thirty (30) day period, the police department or any other agent designated by the Mayor (hereinafter the "city") shall notify the owner of the circumstances involving the said visits. Such notice shall be deemed sufficient for all legal purposes.

(b) *Disorderly houses.* Whenever a building has been identified as a disorderly house by the city, it shall cause written notification of the events which form the basis for that designation to be given to the owner. Such notice shall be sufficient for all legal purposes. The notice shall require the owner to meet with representatives of the city (including the police department) within five (5) business days from the date of the written notification, or such other time as is agreed upon by the city, to identify ways in which the problems that have been identified will be eliminated.

At the time of said meeting, the owner shall be obligated to provide to the city the following documentation:

- (1) A copy of the names of all tenants or other persons authorized to reside or presently residing in the building and the units they occupy;
- (2) copies of all leases with tenants residing in the building;
- (3) contracts with any property manager or other person responsible for the orderly operation of the building;
- (4) an accurate and up-to-date disclosure of building ownership.

In addition, the owner will agree to take effective measures to address the disorderly house, which measures shall be memorialized in a written agreement at the conclusion of the meeting with the city and shall be implemented within one (1) week of said meeting unless another date is agreed upon by the city. Failure to enter into such an agreement at the conclusion of the meeting will be deemed a violation of this housing code, and the city shall file a complaint in the Maine District Court seeking all compensatory and equitable relief permitted by law.

If the same building should be classified as a disorderly house on a subsequent occasion, then the city is under no obligation to meet with the owner but may condemn and post the building or any units therein, and/or proceed directly with a complaint to the district court seeking all compensatory and equitable relief permitted by law.

Sec. 17-172. Enforcement.

If the owner (a) refuses to agree to take effective measures to address the disorderly house, (b) takes ineffective measures to address the disorderly house as determined by the city, (c) fails to implement the agreement reached with the city to address the disorderly house or (d) if, in the

discretion of the city, the disorderly house requires immediate posting, the city may condemn and post the building against occupancy and/or may file a legal action against the owner seeking any and all damages and remedies to which it is entitled pursuant to law.

The police department shall prepare and present a report to the municipal officers annually during the month of November, which describes the actual experience in the field of this Article for the immediately preceding twelve (12) months. (Ord. of 5-18-2009)

Chapter 18

GENERAL ASSISTANCE PROGRAM

Sec. 18-1. Purpose.

This chapter establishes a general assistance program in accordance with the requirements of Title 22, M.R.S.A., Chapter 1251. (Ord. of 4-2-79)

Sec. 18-2. General assistance administrator - Position created; appointment; removal.

There is hereby created the position of general assistance administrator, who shall be appointed by the mayor upon the recommendation of the overseers of the poor. The general assistance administrator may be removed for good cause by the mayor after reviewing the recommendation of the overseers of the poor. (Ord. of 4-2-79)

Sec. 18-3. Same - Duties.

The general assistance administrator shall perform the duties and functions as provided in the rules and regulations for general assistance administration and as required by state law. (Ord. of 4-2-79)

Sec. 18-4. Fair hearing authority established.

The overseers of the poor, appointed pursuant to Section 30 of the charter, shall act as the fair hearing authority to hear appeals from actions of the general assistance administrator as provided in the rules and regulations for general assistance administration and in accordance with state law. (Ord. of 4-2-79)

Sec. 18-5. General assistance standards.

The city council shall establish by ordinance, to be known as the "Rules and Regulations for General Assistance Administration of the City of Westbrook," standards establishing:

- (a) The criteria of eligibility for relief;
- (b) The criteria for determination of need of each applicant for relief;
- (c) The maximum amount of assistance to be provided;
- (d) That all persons wishing to apply shall have opportunity to do so;
- (e) That relief shall be furnished or denied within twenty-four (24) hours of the date of submission of a completed written application; and
- (f) The procedure for appealing actions of the general assistance administrator to the fair hearing authority.

These rules and regulations shall be available in the office of the city clerk and the general assistance administrator and shall be made available to any member of the public. (Ord. of 4-2-79; Ord. of 4-21-92)

Sec. 18-6. Confidentiality of information.

Records, papers, files and communications relating to an applicant for or a recipient of general assistance relief are confidential and may not be released or made public except as provided in Title 22, M.R.S.A., Section 4508. (Ord. of 4-2-79)

Chapter 19
LIBRARIES¹

Sec. 19-1. Board membership of Walker Memorial Library.

The mayor, by virtue of his office, and five (5) persons to be appointed by him, one (1) from each ward of the city, shall constitute and be known as the Board of Regents of the Walker Memorial Library. (1942 Rev. Code, Ch. XXIII, § 1)

Sec. 19-2. Board's duties generally.

The board of regents as established in the preceding section shall discharge all duties incumbent upon the city respecting the Walker Memorial Library, so called, which has been established in the city under the provisions of the last will and testament of Joseph Walker, deceased.

The board shall meet at the library building, or some other suitable place in the city at such stated time as the majority of the board shall fix, shall keep a full record of their proceedings and provide suitable persons to act as librarians and care for the library building and grounds.

The board shall, with the cooperation and advice of the trustees appointed by the Judge of Probate for the County of Cumberland under the twenty-eighth item of said will, make and adopt suitable rules and regulations respecting the care, use and control of the grounds, building and books belonging to the library; and in the discharge of their official duties may incur such expenses from the appropriations made for the library by the council as are reasonable and proper.

The compensation of library personnel shall be established by the city council, after considering the recommendations of the board of regents, in a manner consistent with the provisions set forth in a city personnel policy. (1942 Rev. Code, Ch. XXIII, § 1; Ord. of 2-20-73)

Sec. 19-3. Procedure for filling board vacancies.

If by reason of death, resignation or removal from the city or removal from office by the mayor, a vacancy in the Board of Regents of the Walker Memorial Library shall occur at any time, the same shall be filled for the unexpired term by appointment from the ward in which the person causing such vacancy resided at the time of his appointment. (1942 Rev. Code, Ch. XXIII, § 1)

Sec. 19-4. Annual appointment of board members.

On the first Monday of January, or as soon as may be thereafter, the mayor shall annually appoint one (1) person to serve on the Board of Regents of the Walker Memorial Library, such appointment shall be for five (5) years and shall be made from the ward in which the person lives whose expired term of service caused such vacancy. (1942 Rev. Code, Ch. XXIII, § 1)

¹ State law reference – Public libraries, 27 M.R.S.A. §§ 101-109.

Sec. 19-5. Board to submit annual estimate of expenses, report of preceding year.

The Board of Regents of the Walker Memorial Library shall annually, in the month of January, lay before the council a careful and detailed estimate of the amount of money that will be needed to defray the expenses of the library for the year ensuing; and shall, on or before the last day of February in each year, submit a full report of their doings for the year preceding, which shall be included in and printed with the city reports. (1942 Rev. Code, Ch. XXIII, § 2)

Sec. 19-6. Treasurer's, auditor's duties generally.

The city treasurer and the auditor of accounts of the city shall serve in the same capacities for the Board of Regents of the Walker Memorial Library and shall keep separate accounts with the library, which shall be submitted with their annual reports to the city and printed with the same. (1942 Rev. Code, Ch. XXIII, § 3)

Chapter 20
LICENSES AND PERMITS

- Art. I. [In General](#), §§ 20-1 – 20-30
- Art II. [Food Service Establishments](#), §§ 20-31 – 20- 50
 Div 1. Generally, §§ 20-31 – 20-40
 Div 2. Mobile Vending Units & Ice Cream Trucks, §§ 20-41 – 20-45
 Div 3. Pushcart/Portable Vending Units, §§ 20-46 – 20-50
- Art III. [Amusement Permit](#), §§ 20-51 – 20-55
- Art IV. [Pinball and Video Machines](#), §§ 20-56 – 20-60
- Art V. [Pool Room](#), §§ 20-61 – 20-63
- Art VI. [Bowling Alley](#), §§ 20-64 – 20-66
- Art VII. [Sale of Tobacco Products](#), §§ 20-67 – 20-77
- Art VIII. [Theaters](#), §§ 20-78 – 20-80
- Art IX. [Games of Chance](#), §§ 20-81 – 20-85
- Art X. [Transient Sales](#), §§ 20-86 – 20-95
- Art XI. [Taxicab & Livery](#), §§ 20-96 - 20-114
- Art XII. [Massage Establishments](#), §§ 20-115 – 20-125
- Art XIII. [Automobile Salvage Yards & Junkyards](#), §§ 20-126 – 20-130
- Art XIV. [Commercial Haulers](#), §§ 20-131 – 20-135
- Art XV. [Towing](#), §§ 20-136 – 20-154
- Art XVI. [Farmers Market](#), 20-155 – 20-160
- Art XVII. [Tattoo Establishment](#), 20-161 – 20-171
- Art XVIII. [State Liquor License Applications](#), 20-172 – 20-174
- Art XIX. [Sales of Consumer Fireworks](#), 20-175 – 20-185
- Art XX. [Use of Consumer Fireworks](#), 20-186 – 20-194
- Art XXI. [Pawnshops and Pawnbrokers](#), 20-195 – 20-204
- Art XXII. [Secondhand Dealers](#), 20-205 – 20-215

ARTICLE I. IN GENERAL

Sec. 20-1. Definitions

The following definitions shall apply to the interpretation and the enforcement of this chapter:

Business. Any sole proprietorship, joint venture, corporation or other business entity formed for profit-making purposes, including the retail establishments where goods or services are sold as

well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered in the city.

Charitable Organization. A bona fide nonprofit, charitable, educational, political, civic, recreational, patriotic, fraternal, or religious organization, which is organized under the provisions of 13 M.R.S.A. § 901, or 13-B M.R.S.A. § 201, or which is recognized as such by the Internal Revenue Service under 26 U.S.C. § 501(c)(3).

Consumer. Any person who purchases or contracts for the purchase of merchandise or services for any purpose except for use in the ordinary course of trade or business.

Employee. Any independent contractor, agent or person working for a salary or commission.

Health officer shall mean the health officer of the city or his/her duly appointed health inspector. (Ord. of 6-3-13)

Merchandise. Any objects, wares, goods, promises, commodities, intangibles, services or other things of value.

Permanent place of business. Any building or other permanently affixed structure located within the corporate limits of the city, which is owned or held under a lease or rental agreement at the time that business is commenced, and is used in whole or in part for the purpose of engaging in sales or service to consumers.

Person shall mean any individual, partnership, firm, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

Qualified applicants. The phrase "qualified applicant" shall mean a person, firm, corporation or association of good moral character. Proof of good moral character shall include general testimony of applicant's reputation in the community and the results of a records check by police department. Such results shall be considered relevant only if they disclose a felony conviction within the last ten (10) years.

Sale. Any sale, transfer, exchange, barter, offer for sale, promise to sell, or attempt to sell any merchandise for cash or credit.

Sec. 20-2. Securing, submitting of application for license.

(a) All applications for a license required by this chapter shall be in writing and on forms and procured from the city clerk, completed and signed by the applicant or his/her agent and filed with the city clerk. The application shall identify all the owners, officers, partners or managers of the applicant's business, with their places of residence at the time of the application and a statement as to the nature, date and location of any criminal convictions as to those persons. In addition to other requirements stated in this chapter, background investigations are required of all new applicants before a license shall be issued. The applicant shall be responsible for paying the license application fee and the background investigation fee set forth in the Master Fee Schedule attached hereto as Appendix B. A copy of each onsite owner, officer, partner and manager's driver's licenses shall be submitted with all new applications in order to conduct a proper background investigation. Motor vehicle violations need not be listed unless specifically requested on the application.

(b) The city clerk, upon receipt of a completed application, shall immediately forward a copy of the same to the Code Enforcement Officer, the Fire Chief and the Chief of Police or their designated assistants or agents, who shall investigate the application and/or premises for compliance with the provisions of this chapter. Inspections for transient sales, taxicabs,

commercial haulers and towing companies will not be required by Code Enforcement and the Fire Chief or his/her designee. Farmer's Market Licenses do not require any inspections by any departments. Inspections shall be completed in a timely manner as to not delay the application process. Except as otherwise provided in Sec. 20-3(a) below for all taxicab driver license applications (both new and renewals) and for all taxicab business licenses (both new and renewals), licenses shall be granted if the city clerk approves the application based upon the positive recommendation of each such inspecting officers or shall be granted by the municipal officers if they approve the application following a public hearing if required under Sec 20-3.

(c) The city clerk shall send a list to the municipal officers of business licenses to be renewed by inspecting officers no less than thirty (30) days prior to the business license expiring and shall at the same time post a copy of the list on the City's website.

(d) The city clerk may, for any reason, refer a license application to the municipal officers for a public hearing and decision on whether the license meets the standards of this Chapter.

(e) If the city clerk denies a license application, the applicant may appeal that decision to the municipal officers within thirty days of the date of the decision. The municipal officers shall hold a de novo hearing on the application in accordance with the procedures set forth in Sec. 20-3 of this Chapter.

Sec. 20-3. Review of permit application at public hearing.

(a) The municipal officers shall hold a public hearing for new applicants of Amusement; Massage Establishments; Taxi Cab Businesses; Food Service Establishments with consumption of alcohol on premises; Food Service Establishments with outdoor dining in a public way; Tattoo Establishments; and new and renewal applicants of Automobile Graveyards and Junkyards. Municipal officers may hold a public hearing on any other business license upon submitting a request to the city clerk; provided that all applications for taxicab driver licenses and all applications for taxicab business license renewals shall be forwarded to the municipal officers for licensing decisions, but without the need for a public hearing. Completed applications, as required per Sec. 20-2, when submitted to the municipal officers shall bear the recommendation for approval or disapproval of the Code Enforcement Officer, the Fire Chief and the Chief of Police or their designated assistants or agents. A public hearing shall be held thereon at the next regular or special meeting of municipal officers. Notice of the said public hearing shall be mailed to the applicant and published in a paper of general circulation in the city at least seven (7) days prior to said hearing. The cost of said publication shall be paid by the applicant. (Ord. of 8-28-78; Ord. of 7-6-82; Ord. of 2-3-86; Ord. of 11-19-12)

(b) The municipal officers shall take the testimony of the applicant and any interested members of the public at the public hearing, shall accept any evidence presented, and shall review the findings of the inspecting officers.

(c) After said public hearing the municipal officers, by a majority vote, may authorize the issuance of said license, provided that the applicant and the proposed licensed premises are found qualified for the issuance of the license under the provisions of this chapter.

(d) The municipal officers shall notify the applicant within seven (7) days, in writing, if the permit is denied and shall state the reasons therefor.

Sec. 20-4. Right of inspection of licensed premises.

The applicant, his/her agents and employees, shall allow access by the Code Enforcement Officer, Fire Chief and Chief of Police or their designated assistants or agents for the purpose of inspecting the premises to assure compliance with the provisions of this chapter. (Ord. of 8-28-78)

Sec. 20-5. Schedule of fees.

(a) The license fees are set forth in the Master Fee Schedule attached hereto as Appendix B. License fees paid in advance to issuance of license, shall be refunded upon denial of such license. (1942 Rev. Code, Ch. XXXII-A, § 3, Ch. XLI, § 7; Ord. of 3-14-46; Ord. of 8-7-62; Ord. of 6-7-82; Ord. of 2-3-86; Ord. of 1-22-91; Ord. of 10-7-91; Ord. of 4-18-95; Ord. of 5-30-95; Ord. of 11-25-02).

(b) The application fee for all licenses and permits required by Chapter 20 enumerated in the Master Fee Schedule, attached hereto as Appendix B, shall be non-refundable. There shall only be one application fee paid if applicant is applying for multiple licenses at one time.

(c) License fees shall be waived for charitable organizations.

(d) The license fees enumerated in the Master Fee Schedule, attached hereto as Appendix B, shall be paid to the city clerk or treasurer before the license can have legal operation. (1942 Rev. Code, Ch. XXXII-A, 3)

Sec. 20-6. Proration of certain fees.

The fee required by any provision of this article shall be prorated by the official or body granting such license or permit when the following criteria are met:

(a) The application must be for a new license or permit;

(b) The fee must be for an annual license or permit;

(c) The license or permit, if granted, would expire in less than one year; and

(d) The amount of such prorated fee is not less than one-quarter of the annual fee. (Ord. of 4-1-91)

Sec. 20-7. Transferability of license, permit.

No license issued pursuant to the provisions of this chapter shall thereafter be transferred to another person or firm. Upon the termination or transfer of a business or occupation, the successor shall make new application for a permit or license. No part of a license fee shall be refunded in the event the licensed activity ceases prior to the expiration of the license. Licensees must notify the city clerk's Office when they are relocating to a new location or changing to a different vehicle or device. An inspection by the Code Enforcement Officer and Fire Inspector of the new business location or vehicle or device shall be required prior to the transfer of such license. (Ord. of 4-1-91)

Sec. 20-8. Suspension, revocation or denial of license.

(a) The holder of any license granted pursuant to this chapter, who violates any provision of this chapter, shall be notified by the city clerk or Inspecting Officers in writing of the violation and shall be given a reasonable period of time to correct the same.

(b) The City Clerk may suspend or deny a license if licensee fails to comply with any of the terms of this chapter. The city clerk may consider any recommendation by the Code Enforcement Officer, Fire Chief or Chief of Police to suspend or deny a license based upon a

failure to comply with all applicable code and ordinance requirements. A licensee may, at any time after the suspension or denial of his/her license, make an application in writing for the reinstatement or issuance of his/her license to the city clerk, representing that the condition for which the suspension or denial was imposed has been corrected. The city clerk shall cause a reinspection of the premises by the appropriate official within three (3) business days after the receipt of the application. If the city clerk finds that the licensee has come into compliance with the terms of this chapter and other applicable code and ordinances, the license shall be reinstated or granted. If the licensee continues to fail compliance after the reinspection, the licensee may make a second request for reinspection, and the city clerk shall within three (3) business days after receipt of that request cause a second inspection of the premises. If the inspection finds that the licensee is again complying with the terms of this chapter and other applicable codes or ordinances, the license shall be reinstated. If the licensee has failed to come into compliance as determined by the second inspection, the city clerk may refer the matter to the municipal officers for further action as may be necessary. The licensee shall pay a reinspection fee as set forth in the Master Fee Schedule attached hereto as Appendix B for each time a reinspection is needed.

(c) In the event the licensee does not satisfactorily comply with the requirements of the city clerk after such suspension or denial, either party may apply to the municipal officers through the city clerk for a public hearing in the manner provided in this Chapter. Notice of such public hearing shall be mailed to the licensee or left at the licensed premises at least three (3) days before the time set for such hearing. The municipal officers shall conduct such hearing and thereafter revoke, suspend, reinstate or issue such license. Repeated incidents of such suspensions shall be considered a basis for revocation of the license. An appeal from any final decision of the municipal officers relative to issuance, denial, suspension or revocation of licenses under this chapter may be taken by any aggrieved party, to the Superior Court, in accordance with the provisions of Rule 80B of the Maine Rules of Civil Procedure. (1942 Rev. Code, Ch. XXXII-A, § 9; Ord. of 8-7-62)

Sec. 20-9. Standards for denial, suspension or revocation.

The municipal officers, or the city clerk, as may be applicable, in addition to other provisions of this code authorizing such action, may deny, suspend, or revoke a license upon one or more of the following grounds:

- (a) The premises for which such permit is sought fails to comply with all building, housing, fire and other safety codes of the city;
- (b) There has been a failure to fully complete the application forms or to pay any fee required hereunder; and incorrect statement of material fact has been made knowingly on such form; or there has been a knowing omission of material fact or additional documentation required or reasonably necessary to determine whether such license is issuable;
- (c) An applicant has a disqualifying criminal conviction, based upon the following:
 - 1. For a period of one (1) year from the date of the discharge of the sentence for the most recent conviction for a Class D or E crime, or an equivalent offense in any other jurisdiction, that falls into any one of the following categories: theft, robbery, burglary, assault, sex crimes, drugs, prostitution, weapons.
 - 2. For a period of three (3) years from the date of the discharge of the sentence for the most recent conviction for a Class C crime, or an equivalent offense in any other jurisdiction.

3. For a period of five (5) years from the date of the discharge of the sentence for the most recent conviction for a Class B crime, or an equivalent offense in any other jurisdiction.
4. For a period of ten (10) years from the date of the discharge of the sentence for the most recent conviction for a Class A crime, or an equivalent offense in any other jurisdiction.
5. For a period of ten (10) years from the date of the discharge of the sentence for the most recent conviction for a Class A crime, or an equivalent offense in any other jurisdiction or if either of the following have occurred.
 - i. The applicant has received more than two (2) criminal convictions for Class B, C or D crimes, or any combination of such crimes within the preceding ten (10) year period; or
 - ii. The applicant has utilized a weapon of any type in the commission of a crime.

Where an applicant for a license or a licensee has more than one (1) disqualifying criminal conviction within the previous ten (10) years, the applicant shall be disqualified for the longest applicable period of time. If an applicant receives a subsequent disqualifying criminal conviction during a period of disqualification for another offense, the disqualification period for the subsequent offense shall run from the date of the discharge of the sentence for the subsequent conviction. If the disqualification period for the subsequent offense extends beyond the initial disqualification period, then the applicant shall remain disqualified for such additional time period.

The periods of disqualification set forth in subsection (c) above, other than subsection (c)5, may be reduced by six (6) months if the applicant can show that after the conviction he or she did at least one (1) of the following:

- (1) Successfully completed a drug or alcohol rehabilitation program, if the disqualifying criminal conviction involved the use of alcohol or drugs, as evidenced by a certificate of completion of the program or a letter from an official of the program;
 - (2) Successfully completed a domestic violence therapy program or treatment if the disqualifying criminal conviction involved domestic violence, as evidenced by a certificate of completion of the program, a letter from an official of the program or a letter from a licensed counselor or therapist; or
 - (3) Made restitution for the crime committed, as evidenced by appropriate court documentation or probation records.
- (d) The applicant's business and professional reputation have been the source of client complaints;
 - (e) The business operations have or will likely be a nuisance to owners of adjoining property or to the public and has been or will be detrimental in any way to the health, safety and general welfare of the public.
 - (f) The licensee or clients have or will substantially and adversely affect the peace and quiet of the neighborhood in which the licensed premises is located;
 - (g) The licensee has violated any provision of this Code in the course of operating his/her business, which event would have been the basis for denying the license originally;

(h) The applicant's or licensee's real estate and personal property taxes, registration fees, sewer and other charges associated with the business are in arrears with the city, unless an arrangement to pay such taxes has been made to the satisfaction of the tax collector. (1942 Rev. Code, ch. XXXII, § 1; Ord. of 10-7-91; Ord. of 2-5-96); and

(i) Failure to notify the clerk of any change of material fact set forth in the license application.

(Ord. of 8-3-92)

Sec. 20-10. Penalties.

In addition to the standards set forth in section 20-9 for suspension or revocation of the license, any person who violates any provision of this article or the article which pertains to the specific license they hold shall be subject to the fines set forth in the Master Fine Schedule attached hereto as Appendix C. Each day that such violation continues shall be considered a separate offense. (Ord. of 8-28-78)

Sec. 20-11. Expiration Date.

(a) All licenses shall expire annually as set forth in the Master Fee Schedule attached hereto as Appendix B, unless otherwise specified.

(b) All licensees who have not submitted their application for renewal of their license by the expiration date of such license will be required to submit a new license application and be subject to all regulations that apply to a new license, including inspections, background investigations, fees and municipal officer approval.

Sec. 20-12 – 20-30. Reserved.

ARTICLE II. FOOD SERVICE ESTABLISHMENT

DIVISION 1. GENERALLY

Sec. 20-31. Definitions.

Drive-in restaurant shall mean any premises where food or drink of any kind is served directly to, or is permitted to be consumed by patrons in or about motor vehicles parked on such premises.

Caterer is one who does not have a permanent fixed location to serve food and whose business is to provide food to sell or serve at a location off premises from where the food preparation took place.

Employee – Food Service Establishment. Any person who handles food or drink during its preparation or serving, or who comes in contact with any eating or cooking utensils, or who is employed in a room in which food or drink is prepared or served.

Food Service Establishment shall mean any person operating any "restaurant," "itinerant restaurant," "drive-in restaurant," "mobile vending unit", "caterer" or as herein defined within the city. (1942 Rev. Code, Ch. XXXII-A, § 1; Ord. of 8-7-62 ; Ord. of 4-6-70; Ord. of 12-3-90, § 1)

Ice Cream Truck shall be a motorized vehicle utilized for the sale of prewrapped or prepackaged ice cream or frozen yogurt products or novelties.

Itinerant restaurant shall mean a restaurant being operated for a temporary period in connection with a fair, carnival, circus, public exhibition or other similar gathering.

Mobile vending unit shall mean any vehicle which is used for the retail sale therefrom of any prepared food, sandwiches and drinks and travels from place to place for the sale thereof, but not including vehicles used for the transportation of milk and dairy products or bread and bakery products for the sale or delivery to homes and business establishments.

Pushcart/Portable Vending Unit shall mean a self-contained, non-motorized vending unit, equipped and operated for the preparation and/or sale of food and/or beverages, equipped with wheels to allow for easy movement from one location to another and shall not exceed the following dimensions: three (3) feet in width, eight (8) feet in length and six (6) feet in height. The unit may be equipped with an umbrella, awning or canopy constructed of non-rigid fabric which adds a maximum of two (2) feet to the overall height of the unit but does not exceed maximum width and length dimensions.

Restaurant shall mean any restaurant, coffee shop, cafeteria, short order cafe, luncheonette, sandwich stand, soda fountain and all other eating or drinking establishments, including kitchens or all other places in which food or drink is prepared for sale on the premises or elsewhere. Outdoor dining in the public way is permitted as an accessory to a primary indoor restaurant, as further regulated herein.

Stationary vending unit shall include any vehicle from which food products are sold which is licensed for one location on private property and which conducts all of its sales within the city from that one location.

Utensils shall include any kitchenware, tableware, glassware, cutlery, utensils, containers or other equipment with which food or drink comes in contact during storage, preparation or serving.

Vehicle shall mean not only motorized conveyances licensed motor vehicles by the state but also any trailer, mobile stand, push cart or other equipment from which food sales are made which is capable of being and is regularly hauled, pushed or otherwise moved from place to place.

Sec. 20-32. License required; posting.

Licenses shall be obtained per requirements set forth in Sec. 20-1 – Sec. 20-30, and such licenses shall be posted in a conspicuous place at the licensed premises.

Non-profit organizations such as, but not limited to, church fairs, sporting events and school sponsored activities and all vendors operating on a temporary, short-term basis such as for Westbrook Together Days and similar community celebrations, fairs and parades, shall not require a license, but shall be subject to inspections by the Code Enforcement Officer and Fire Department.

Sec. 20-33. Restaurants to comply with local state regulations.

All restaurants must comply with all the city and state ordinances, laws and regulations as to the building, exit, and plumbing codes and regulations, and all licensees must fully comply with the following items as to safety and sanitation.

- (a) All rooms in which food and drink are prepared or in which utensils are washed shall be well lighted and ventilated.
- (b) All walls and ceilings shall be kept clean and in good repair.

- (c) When flies are prevalent, all openings into the outer air shall be effectively screened and doors shall be self-closing unless other effective means are provided to prevent the entrance of flies.
- (d) There shall be at least one (1) toilet on the premises of all restaurants and where alcoholic beverages are served or when eight (8) or more persons are employed at any one time there shall be provided at least one (1) toilet for each gender. All toilet rooms shall be kept in a clean condition, in good repair, well lighted and ventilated.
- (e) All equipment and utensils, including display cases, windows, counters, shelves, tables, refrigerators, stoves, hoods and sinks shall be clean and free from dust, dirt, insects and other contaminating material.
- (f) All multi-use utensils used in the preparation or serving of food or drink shall be thoroughly cleaned and subjected to an approved bactericidal process after each usage and shall be stored in a clean, dry place protected from flies, dust and other contamination as far as practicable.
- (g) All food and drink shall be clean, wholesome, free from spoilage and so prepared as to be safe for human consumption and shall be so stored as to be protected from dust, flies, vermin, rodents and other contamination.
- (h) Adequate and convenient hand washing facilities shall be provided including hot and cold water, soap and clean towels where any food is prepared. No employee shall resume work after using the toilet room without first washing his/her hands.
- (i) All employees shall wear clean outer garments and shall keep their hands clean at all times while engaged in handling food, drink, utensils or equipment.
- (j) No person who is infected with any disease in a communicable form or is a carrier of such disease shall work in any licensed premises or be employed by any licensee. If the licensee or manager suspects that any employee is infected with any such disease or is a carrier thereof, he shall immediately notify the health officer.
- (k) When suspicion arises as to the possibility of transmission of infection from any such employee, the health officer is authorized to require any or all of the following:
 - (1) The immediate exclusion of the employee from all restaurants.
 - (2) The immediate closing of the premises concerned until, in his opinion, there is no further danger of disease outbreak.
 - (3) Adequate medical examinations of the employee and his/her associates with such laboratory examinations as may be required. (1942 Rev. Code, Ch. XXXII-A, § 4; Ord. of 8-7-62)
- (l) Outdoor dining in the public way is permitted year round, except during the Winter Parking Ban. In any event, furniture may not be fixed in place and must be removed in severe weather to allow for maintenance of the public way. A Business License Application must be approved before the activity is allowed to commence. The license must be renewed each year. All of the following information is required and must be submitted with the application.

A plot plan including the following:

- (1) A drawing of the lot, where the building sits on the lot along with the lot and building dimensions
- (2) A depiction of the property lines and the dimensional setback, if any, from the sidewalk to the building
- (3) The location of the street, and if it is a corner lot, the intersecting streets
- (4) The sidewalk along with its width and curbing location and any fixed objects such as street signs, benches, esplanades, light poles and trash cans.
- (5) If the outdoor dining is proposed on public property that is not a sidewalk then the public property must be clearly defined, including dimensions and any fixed objects, such as signs, light poles, trees, planters and trash cans
- (6) The location of the table and chair placement, any other components proposed for the outdoor dining activity, and the dimensions of area to be used
- (7) There must be a minimum of (4) four feet of open sidewalk from the outer boundary of the seating area to the curb, and a minimum of (5) five feet on corners, and egress from the building must be maintained free of obstruction per the building code and life safety code.

Additional requirements:

- (1) The applicant is required to produce, at the time of submission, and maintain public liability insurance coverage in an amount of not less than four hundred thousand dollars (\$400,000) combined single limit for bodily injury, death and property damage, naming the City as an additional insured thereon.
- (2) The license holder understands that the City of Westbrook, its agents, officers and employees accept no responsibility and will not be liable for any injury, harm or damage to the license holder's person or property arising out of the establishment's occupancy of the public way. The City will not be responsible for damage to any tables, chairs or other property that is not properly removed when the City is engaged in the maintenance of the public way.
- (3) The tables and chairs must be placed within the licensed area in such a manner as to allow the free and safe passage of pedestrian traffic. If the tables and chairs are moved and located outside of the licensed area, they must be relocated to within the licensed area. Failure to contain the tables and chairs to the licensed area may result in a reduced licensed area or a revocation of the license.
- (4) The outdoor dining area may be heated by a portable appliance and may include an awning for overhang but the area may not be enclosed and the activity, including overhang, may not extend beyond the licensed area.
- (5) The license holder is responsible for keeping the outdoor seating area clean. The sidewalk area where the tables and chairs are located must be kept neat and free from litter and debris.

- (6) No food shall be prepared outside.
- (7) If alcohol is to be served, the license holder must hold the appropriate license. Additionally, State law requires that any outdoor area serving alcohol be segregated from the rest of the public.
- (8) The hours of operation of the outdoor dining activity shall not extend beyond those of the primary indoor restaurant and, where the use abuts a residential zone, shall be limited to between 9:00 am to 11:00 pm, unless otherwise approved by the City Council.

(Ord. of 11-19-12)

Sec. 20-34. Duty to keep premises free of debris.

It shall be the duty of all food service establishments to keep at all times the premises whereon their place of business is located, together with the parking area and that portion of the public way adjoining such premises, free from all rubbish, waste products and debris of all kinds, including, but not being limited to, disposed food products, napkins, straws, paper cups and plates, and other waste material. (Ord. of 4-6-70)

Sec. 20-35. Duty to provide waste containers.

All food service establishments shall provide a sufficient number of waste containers to hold waste material until the same is removed from the premises. Such containers shall be made of metal construction, or other similar material, with self-closing reach-in type covers. (Ord. of 4-6-70)

Sec. 20-36. Noise on premises regulated.

No food service establishment shall operate or permit to be operated any loudspeakers, or make, or permit to be made, any other loud or excessive noise on his/her premises; provided, however, a food service establishment may use a public address system solely for the purpose of giving instructions to employees on the premises, but not so as to cause any annoyance or disturbance to persons not on said premises. (Ord. of 4-6-70)

Sec. 20-37. Inspections required.¹

Annually the code enforcement officer and the fire chief or fire inspector shall inspect every restaurant located within the city. In case they discover the violation of any item of safety or sanitation, they shall follow the guidelines set forth in Section 20-8.

The person operating the restaurant shall upon the request of the code enforcement officer and the fire chief or fire inspector, permit access to all parts of premises for such inspections and shall permit copying any and all records of food purchased. (1942 Rev. Code, Ch. XXXII-A, § 7 ; Ord. of 8-7-62; Ord. of 6-3-13)

Sec. 20-38. Standards for denial, suspension or revocation.

The municipal officers, in addition to other provisions of this code authorizing such action, may deny, suspend, or revoke a license upon stipulations set forth in Sec. 20-8 as well as any of the following grounds:

¹ **State law reference** – State inspections of licensed eating establishments, 22 M.R.S.A. § 2171.

- (a) Formal adjudication of one or more code violations relating to the health or safety of food service customers.
- (b) Motor vehicle offenses within five (5) years prior to the application date unless those offenses were felonies in which case no time limit shall apply. This shall apply to Mobile Vending Units only.

Sec. 20-39 – 20-40. Reserved.

DIVISION 2. MOBILE VENDING UNITS

Sec. 20-41. Sales from mobile vending units.¹

(a) *Use of public streets and public property restricted.* No mobile vending unit shall stop for sales within the public right-of-way of any public street or on any publicly owned property, except when such street is under construction. Special permission may be obtained from the City Clerk's Office for a mobile vending unit to operate on publicly owned property on a case by case basis and for a specific period of time provided the location complies with condition 2 of this Section. Mobile vending units may stop within the public right-of-way under the following conditions:

- (1) The stop shall be for the purpose of selling food products to the persons engaged in the street construction;
- (2) The vehicle shall not be stopped for sales within three hundred fifty (350) feet of any other food service establishment licensed by the city except another mobile vending unit; and
- (3) The vehicle shall not be stopped for sales in any location so as to create traffic congestion or a hazard to vehicular or pedestrian traffic.

(b) *Compliance with state health regulations required.* No mobile vending unit shall be licensed to operate in the city unless it is in full compliance with all applicable regulations as promulgated by the state Department of Human Services, Division of Health Engineering.

Every mobile vending unit operator licensed by the city shall provide to the city code enforcement officer copies of all state licenses, state inspection certificates and/or inspection reports within seven (7) days of receipt by the operator including any municipal license, inspection certificate or report authorized by the state as a substitute for such state license or inspection. (1942 Rev. Code, Ch. XXXII-A, § 6; Ord. of 8-7-62; Ord. of 5-24-82; Ord. of 12-3-90, § 3; Ord. of 6-3-13)

(c) *Each unit to be licensed.* If a company owns more than one mobile vending unit, it shall be required to have a license for each unit that will be operating within city limits and to provide to the city clerk evidence of public liability insurance in an amount of not less than four hundred thousand dollars (\$400,000.00), with the city named as an additional named insured on the policy.

(d) The use of any amplification device, radio, recorded music or any sound generating device is prohibited.

Sec. 20-42. Sales from ice cream trucks

All ice cream trucks shall comply with the following:

¹ **State law reference** – Municipal authority to regulate lunch wagons, 30-A M.R.S.A. § 3931.

- (a) *Permitted sales locations.* Ice cream trucks shall be limited to sales on or from public rights-of-way in residential zones only, where such public rights-of-way have a posted speed limit of thirty (30) miles per hour or less; provided, however ice cream truck vendors may also purchase a license to operate at one of the pushcart locations in Riverbank Park. Special permission may be obtained from the City Clerk's Office for an ice cream truck to operate on publicly owned property on a case by case basis and for a specific period of time provided the location complies with Item B of this section. (Ord. of 8-30-10; Ord. of 6-3-13)
- (b) *Sales prohibited.* No ice cream truck shall stop at any time for the purpose of making sales if such stop is located within three-hundred fifty (350) feet of any other food service establishment licensed by the city except another mobile vending unit; provided, however this section shall not apply to an ice cream truck vendor while they are operating out of a pushcart location licensed for this purpose. (Ord. of 8-30-10)
- (c) *Length of stop.* No ice cream truck shall stop on a public right-of-way in a residential zone for more than fifteen (15) minutes. An ice cream truck shall operate its four-way flashers whenever stopped.
- (d) *Manner of stops.* Ice cream trucks shall pull over to the side of the public right-of-way as far as practicable when stopping for the purpose of selling. In no event shall an ice cream truck stop for the purpose of selling if such a stop prevents the passage of other motor vehicles on the public right-of-way.
- (e) *Hours of operation.* Ice cream trucks shall only operate from 11:00 a.m. until 8:00 p.m.
- (f) *Each unit to be licensed, insured.* If a company owns more than one ice cream truck, it shall be required to have a license for each unit that operates within city limits and provide to the city clerk evidence of public liability insurance in an amount of not less than four hundred thousand dollars (\$400,000.00), with the city named as an additional insured on the policy.
- (g) The use of any amplification device, radio, recorded music or any sound generating device is prohibited after 7:00 p.m.
- (h) Ice cream truck licensees who purchase a license to operate at a pushcart location shall abide by Sections 20-47 and 20-48. (Ord. of 8-30-10)

Sec. 20-43 – 20-45. Reserved.

DIVISION 3. PUSH CART/PORTABLE VENDING UNITS

Sec. 20-46. Operations of Pushcart/Portable Vending Units.

No pushcart or portable vending unit shall operate within the right-of-way of any public street or on any municipally owned property except as expressly permitted under this division. Sales from properly licensed pushcarts or portable vending units shall be permitted in Riverbank Park and along the Riverwalk Boardwalk at locations specified by the city. A maximum of six (6) pushcart/portable vending units shall be licensed at any time.

Pushcarts will be allowed to temporarily relocate to a different location in the city with special permission on a case by case basis and for a specific period of time such as to sell food at a baseball field where no other food vendors are located.

Sec. 20-47. Pushcart/Portable Vending Unit Performance Standards.

- a. Units shall not be operated in a way that would restrict or interfere with pedestrian flow on sidewalks, boardwalks or walking paths.
- b. Unit operators shall be responsible for the collection and disposal of all trash or other waste products generated by their activity and shall keep the immediate area of their units clean and free of litter.
- c. The use of electric generators is prohibited.
- d. The use of any amplification device, radio, recorded music or any sound generating device is prohibited.
- e. Units may begin operation at 10:00am and must close no later than 9:00pm. Units must be removed from the park/boardwalk each day. Set-up and take down shall be permitted for a maximum of thirty (30) minutes prior to opening and following closing.
- f. Each unit shall display its valid state and local food service licenses in a visible location.
- g. All applicable local, state and federal requirements shall be met.
- h. A Certificate of Insurance for General Liability Insurance, in an amount not less than \$400,000, with the city named as an additional named insured, shall be placed on file with the city clerk prior to issuance of any license and shall be maintained throughout the term of the license.

Sec. 20-48. Pushcart/Portable Vending Unit Signage.

Signs shall be permitted subject to the following requirements.

- a. No more than two (2) signs, excluding lettering on an umbrella or awning, are permitted on each unit. Each sign shall not exceed four (4) square feet.
- b. One menu board, not to exceed six (6) square feet is permitted and not considered a sign.
- c. Freestanding signs are prohibited.
- d. Illuminated or flashing signs are prohibited.

Sec. 20-49 – 20-50. Reserved

ARTICLE III. AMUSEMENT PERMITS

Sec. 20-51. Definitions.

Amusement. A business with the sale and consumption of liquor on premises who also offers music (except radio or other mechanical device), any dancing or entertainment of any sort, as defined by Title 28-A M.R.S.A., Section 1054(10) to the public for profit-making purposes.

Sec. 20-52. Amusement permit required.

No licensee for the sale of liquor to be consumed on the premises shall permit any music, (except radio or other mechanical device), any dancing or entertainment of any sort, unless he or

she shall first have obtained an amusement permit per the requirements set forth in Sec. 20-1 – Sec. 20-30. (Ord. of 8-28-78)

Sec. 20-53 – 20-55. Reserved.

ARTICLE IV. PINBALL/VIDEO MACHINES

Sec. 20-56. Definitions.

Coin-operated amusement machine. As used in this article, a "coin-operated amusement machine" shall include any and all those mechanical or electronic machines or games which, upon the insertion of a coin, slug, token, plate or disc, or upon payment of a fee, may be operated by the public generally, or the members of a club or organization, for use as a game, entertainment or amusement and which does not dispense any form of payoff, prize or reward except free replays; whether or not they register a score and/or can be placed in operation by a remote control.

Qualified premises. The phrase "qualified premises" shall mean the business location where the coin-operated amusement machines are to be licensed, which must comply in every respect with the local zoning ordinance, and also with the state and local building, plumbing, health and fire safety codes, rules and regulations; and the proposed use of the premises shall not adversely affect the proper use or property values of the other property in the area and does not create any traffic hazards in the area. (Ord. of 9-27-82, § 2)

Sec. 20-57. License required for coin-operated amusement machines.

No person, firm, corporation or association shall keep for public patronage, or allow the operation of, any coin-operated amusement machine in or on any premises under his/her, her or its charge, custody or control without first having obtained a license per the requirements set forth in Sec. 20-1 – Sec. 20-30. Any such license shall not be transferable among owners or to different locations and shall be conspicuously posted on the licensed premises, showing the number of duly licensed machines. (Ord. of 9-27-82, § 5)

Sec. 20-58. Standards for denial, suspension or revocation.

The municipal officers, in addition to other provisions of this code authorizing such action, may deny, suspend, or revoke a license upon stipulations set forth in Sec. 20-8 as well as on the basis of a conviction of a gambling offense.

Sec. 20-59. Reserved.

ARTICLE V. POOL ROOM

Sec. 20-61. Definitions.

Pool Room. A business offering the game of billiards to the public for profit-making purposes.

Sec. 20-62. License required for pool tables/billiards.

No person, firm, corporation or association shall keep for public patronage, or allow the operation of, any billiards table in or on any premises under his, her or its charge, custody or control without first having obtained a license per the requirements set forth in Sec. 20-1 – Sec. 20-30.

20-63. Reserved.

ARTICLE VI. BOWLING ALLEY

Sec. 20-64. Definitions.

Bowling Alley. A business offering the game of bowling to the public for profit-making purposes.

Sec. 20-65. License required for bowling alley.

No person, firm, corporation or association shall operate a bowling alley on any premises under his, her or its charge, custody or control without first having obtained a license per the requirements set forth in Sec. 20-1 – Sec. 20-30.

Sec. 20-66. Reserved.

ARTICLE VII. ORDINANCE REGULATING THE MANNER
OF SALE OF TOBACCO PRODUCTS

Sec. 20-67. Definitions.

Tobacco product means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing inhalation or other manner of ingestion.

Tobacco retailer shall mean any person or governmental entity that operates a store, stand, booth, concession, or other place at which sales of tobacco products are made to purchasers for consumption or use in the city.

Tobacco specialty store shall mean a tobacco retailer whose business exclusively or primarily involves the sale of tobacco products and related goods.

Self-service merchandising means open display of tobacco products and point-of-sale tobacco products that the public has access to without the intervention of an employee.

Vendor assisted means any automated, self-service device which, upon insertion of money, tokens or any other form of payment dispenses cigarettes or any other tobacco product.

Vending machine means any automated, self-service device which, upon insertion of money, tokens or any other form of payment dispenses cigarettes or any other tobacco product.

Sec. 20-68. License required.

No person, firm, corporation or association shall engage in the sale of tobacco products without first having obtained a license per the requirements set forth in Sec. 20-1 – Sec. 20-30.

Sec. 20-69. Findings and purposes.

The city council does hereby find that:

- (a) Substantial scientific evidence exists that the use of tobacco products causes cancer, heart disease, and various other medical diseases. The Surgeon General of the U.S. has found that tobacco-caused diseases are the leading cause of premature, preventable death and disability in the U.S.;

- (b) The National Centers for Disease Control have found that at least four hundred thirty-four thousand (434,000) Americans die each year from tobacco-caused diseases. The Surgeon General of the U.S. and the U.S. Department of Health and Human Services have found that a majority of those Americans who die of tobacco caused diseases became addicted to nicotine in tobacco products as adolescents before the age of legal consent;
- (c) The National Institute on Drug Abuse has concluded that the nicotine in tobacco products is a powerful addictive drug and identify nicotine addiction as the most widespread example of drug dependence in the U.S.;
- (d) The Surgeon General of the U.S. has found that nicotine in tobacco products is as addictive as cocaine and heroin; and
- (e) The National Institute on Drug Abuse has found that tobacco use by adolescents precedes and is predictive of adolescent illicit drug use.

Accordingly, the city council finds and declares it in the public interest to: (1) license tobacco vendors, including tobacco vending machines; (2) to prohibit self-service sales, self-service displays, racks and shelves of tobacco products except in those premises to which access by minors is not allowed; and (3) require the posting of warning signs at the point of purchase stating the legal age of sale and that identification is required to purchase tobacco products;

The city council further finds it is within its basic police power to implement and enforce the provisions of this ordinance. (Ord. of 2-21-95; Ord. of 5-30-95)

Sec. 20-70. Regulation of manner of sale of tobacco products.

(a) Any person, business, tobacco retailer, or other establishment subject to this ordinance, shall post plainly visible signs at the point of purchase of tobacco products which state, "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN (18) YEARS OF AGE IS PROHIBITED BY LAW. VALID ID IS REQUIRED TO PURCHASE TOBACCO. IF YOU WITNESS ANY CLERK IN THIS ESTABLISHMENT SELLING TOBACCO PRODUCTS TO A MINOR, PLEASE CONTACT THE WESTBROOK POLICE DEPARTMENT."

(b) No person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this ordinance shall sell, offer to sell or permit to be sold any tobacco product to an individual without requesting and examining identification unless the seller has some reasonable basis for determining the buyer's age.

(c) It shall be unlawful for any person, business, or tobacco retailer, except tobacco specialty stores which do not allow persons under the age of eighteen (18) to enter the premises, to sell, permit to be sold, offer for sale or display for sale any tobacco product by means of self-service merchandising.

(d) All tobacco specialty stores and all tobacco retailers including establishments that have tobacco vending machines and are open to the public under eighteen years of age will obtain a tobacco vendor's license from the city and will openly display the license. (Ord. of 2-21-95; Ord. of 5-30-95)

Sec. 20-71. Enforcement.

(a) Enforcement of this ordinance shall be the responsibility of the chief of police or his or her designee.

(b) Any citizen who desires to register a complaint under this ordinance may initiate a complaint with the police department. The chief of police shall notify, and keep a record of notice, any establishment subject to this ordinance of all citizen complaints under this ordinance regarding apparent violation of this ordinance by said person, tobacco retailer, or any owner, manager or operator of any establishment subject to this ordinance.

(c) Notwithstanding any other provisions of this ordinance, a private citizen may bring legal action to enforce this ordinance. (Ord. of 2-21-95)

Sec. 20-72. Violations and penalties.

(a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to this ordinance to fail to comply with any of its provisions.

(b) Any person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this ordinance shall have the following responsibilities:

- (1) To post plainly visible signs at point of purchase stating the sale of tobacco products to persons under the age of eighteen (18) is prohibited by law and valid identification is required to purchase tobacco;
- (2) To request identification from any person buying tobacco products which shows the purchaser is of legal age unless the seller has some reasonable basis for determining the buyer's age; and
- (3) To eliminate self-service merchandising of tobacco products except for tobacco specialty stores which do not allow persons under the age of eighteen (18) to enter the premises;
- (4) To openly display tobacco vendor's license.

(c) Any person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this ordinance who violates any provision of this ordinance shall be deemed guilty of an infraction, punishable by:

- (1) First violation, a fine;
- (2) Second violation within one year, a fine;
- (3) Third violation within one year, revocation of tobacco products license for a period of thirty (30) days; and
- (4) Fourth violation within one year will result in the revocation of tobacco products license for a period of one (1) year.

All fines referred to above are listed in the Master Fine Schedule attached hereto as Appendix C. (Ord. of 2-21-95; Ord. of 5-30-95)

Sec. 20-73. Non-retaliation.

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee or applicant from employment because such employee or applicant agrees to abide by the provisions of this ordinance. (Ord. of 2-21-95)

Sec. 20-74. Other applicable laws.

This article shall not be interpreted or construed to permit tobacco vending machines and distribution of tobacco product samples where they are otherwise restricted by other applicable laws. (Ord. of 2-21-95)

Sec. 20-75. Standards for denial, suspension or revocation.

The municipal officers, in addition to other provisions of this code authorizing such action, may deny, suspend, or revoke a license upon stipulations set forth in Sec. 20-8 as well as any of the following grounds:

- (a) Conviction of an alcohol or tobacco violation; or
- (b) Conviction of a crime involving minor children.

Sec. 20-76 – 20-77. Reserved.

ARTICLE VIII. THEATERS

Sec. 20-78. Definition.

Theater. A building, part of a building, or outdoor area for housing motion-picture shows.

Sec. 20-79. License required for theaters.

No person, firm, corporation or association shall operate a theater on any premises under his, her or its charge, custody or control without first having obtained a license per the requirements set forth in Sec. 20-1 – Sec. 20-30.

Sec. 20-80. Reserved.

ARTICLE IX. GAMES OF CHANCE

Sec. 20-81. Definitions.

Beano and/or Bingo shall mean and include bingo, beano, any other form of lotto, or any other activity defined as being beano or bingo by the applicable licensing provision of the state for which the consent of the municipal officers is required.

Distributor shall mean a person, firm, corporation, association or organization that sells, markets or otherwise distributes sealed tickets, gambling apparatus or any other implements of gambling that may be used in the conduct of a game of chance.

Game of chance shall mean and include any game, contest, scheme, or device other than beano where a person stakes or risks something of value and in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestant or participant may be a factor therein, or any game of chance, machine, raffle, or otherwise, defined and licensed as such by the applicable licensing provision of the state for which the consent of the municipal officers is required.

Sec. 20-82. License Required.

Applications submitted for operating Beano/Bingo or Games of Chance shall be obtained from the State of Maine and follow requirements under 17 M.R.S.A. §330 - §347.

Sec. 20-83. Requirements.

No inspection will be required by Code Enforcement or the Fire Department if the applicant is applying for a license to operate a game of chance or beano at a location that already holds an active business license through the city and where that same location received and passed an inspection by Inspecting Officers within six months prior to the application. The completed application, obtained from the State of Maine, shall be signed by the city clerk on behalf of municipal officers following approval of such license by inspecting officers, if required. Upon approval, the city clerk shall issue a blanket letter of approval to be submitted with the State of Maine license application. The blanket letter of approval shall be valid for one (1) year for Beano/Bingo and six (6) months for Games of Chance.

Sec. 20-84. Standards for denial, suspension or revocation.

The municipal officers, in addition to other provisions of this code authorizing such action, may deny, suspend, or revoke a license upon stipulations set forth in Sec. 20-8 as well as on the basis of a conviction of a gambling offense.

20-85. Reserved.

ARTICLE X. TRANSIENT SALES

Sec. 20-86. Definitions.

Transient seller. Any person who engages in the business of selling merchandise or services to consumers by means of personal contact, and who does not have, for the purposes of carrying on such business, any permanent place of business within this city. The term shall apply to any person otherwise denominated an itinerant dealer, peddler, street vendor, solicitor or canvasser; and it shall apply to all sales made thereby, except such sales as specifically excluded herein, whether the consumer goods are exhibited and sold from one location or in traveling from place to place.

Sec. 20-87. Licenses Required.

No person shall engage in the transient sale of consumer merchandise or services within the city without first having obtained a license as set forth in Sec. 20-1 – Sec. 20-30.

Sec. 20-88. Standards for issuance.

In determining whether a transient sales license should be issued, the inspecting officers, in addition to the standards that are elsewhere set forth in this chapter and the code of ordinances, shall exercise the discretion vested by this article by resolving all questions in favor of the public health, safety, welfare and convenience. In so doing, they shall consider all relevant factors, including the following:

- (1) The ability of the city to enforce the provisions of this article with respect to the particular business;
- (2) The manner, time and location of marketing those goods and services; and the consonance of such sales with the public health, safety, welfare and convenience;
- (3) The risks created by the transient seller, both to pedestrian and vehicular travelers, and to the rights of building owners, occupants and invitees to free and safe ingress and egress; and
- (4) The past history of seller's business reputation and record of consumer complaints.

Sec. 20-89. Limitations.

In addition to any restrictions imposed on a licensee by the inspecting officers, municipal officers or by the code of ordinances, no transient sales may be conducted as follows:

- (a) Within three hundred fifty (350) feet of any part of an establishment having a fixed location which offers for sale the same or substantially similar goods or services, when the transient seller operates from other than a fixed location on private property;
- (b) Within three hundred fifty (350) feet of any other transient seller licensed by the city, when the transient seller operates from other than a fixed location on private property;
- (c) In any congested area in such a manner as to impede the passage of pedestrians or otherwise inconvenience the public, or in such a manner as to obstruct an entrance or exit of a building;
- (d) From a fixed location on a public way, sidewalk or public place;
- (e) From any location where customers would be encouraged or required to stop in the public way;
- (f) From a motor vehicle exceeding one (1) ton G.V.W., when conducted from other than a fixed location on private property;
- (g) By employing persons or equipment not designated in the license application;
- (h) By selling, offering for sale, distributing, or soliciting orders for future sale or delivery of a commodity or service not authorized;
- (i) In such a manner as to constitute an “unfair or deceptive trade practice,” a nuisance, or offense against the public order, as defined by the Maine statutes;
- (j) Between the hours of 9:00 p.m. to 8:00 a.m. except from a fixed location on private property.

(Ord. of 10-7-91)

Sec. 20-90. Exemptions.

The terms of this article shall not apply to the following:

- (a) Religious articles;
- (b) Sales by a charitable organization;
- (c) Sales at auctions, public fairs, expositions and bazaars;
- (d) Sales of produce and foodstuffs at Farmers’ Market;
- (e) Seasonal sale of Christmas trees and wreaths; and
- (f) Sales by persons holding a current sales license issued by the municipal officers under other provisions.

(Ord. of 10-7-91)

Sec. 20-91. License fee and term.

A license applicant, who intends to sell primarily from a fixed location on private property, shall pay the license fee set forth in the Master Fee Schedule attached hereto as Appendix B, which shall be valid for a period of not more than thirty (30) days from date of issuance. Such

person shall be eligible for not more than two (2) transient sales licenses for a particular business or enterprise within a twelve (12) month period. At least thirty (30) days must intervene before a license is renewed.

A license applicant who does not sell primarily from one location on private property shall pay the annual license fee set forth in the Master Fee Schedule. (Ord. of 10-7-91)

Sec. 20-92. Standards for denial, suspension or revocation.

The municipal officers, in addition to other provisions of this code authorizing such action, may deny, suspend, or revoke a license upon stipulations set forth in Sec. 20-8 as well as on the basis of a conviction of a gambling offense.

Secs. 20-93 – 20-95. Reserved.

ARTICLE XI. TAXICABS

Sec. 20-96. Definitions.

In addition to the words elsewhere defined in the code of ordinances, the following terms shall have the meaning ascribed thereto, unless otherwise indicated:

Date of discharge as used herein means the date upon which the sentence has been completed, including any probation or parole period, and the person has been discharged from the criminal justice system for the violation.

Disqualifying criminal offense means and includes any conviction for any criminal offense punishable by imprisonment for any period of time, whether or not the sentence was imposed or served, but shall not include any conviction which is shown to have been set aside on appeal or collaterally, or for which a pardon, certificate of rehabilitation, or the equivalent under the law of the sentencing jurisdiction has been granted.

Limousine shall mean any vehicle designed to carry 5 or more passengers behind the driver's seat which is of a type customarily designated as a luxury "stretch limousine" and is used for the transportation of passengers for hire solely on a reserved hourly or flat rate basis.

Livery means any motor vehicle designed to carry 3 or more passengers behind the driver's seat which is used for the transportation of passengers for hire on a prior reserved hourly or flat rate basis. Livery vehicles shall not be available for hire on a "hail" or walk-up basis by passengers on the street and shall not include a limousine.

Livery Driver shall mean any person who is engaged in the driving of a livery for hire.

Medical transportation vehicle. The term "medical transportation vehicle" shall mean any motor vehicle for hire that is designed and operated to provide non-emergency transportation to passengers who are wheelchair-bound or otherwise restricted in mobility due to physical incapacity, injury, sickness or other medical, vision, or age-related reason. For purposes of this article, medical transportation vehicles are taxicabs, except that any motor vehicle utilized by a local, regional or nationally affiliated transportation agency that is registered and in good standing as a Maine non-profit corporation and that performs a background check on its drivers that is substantially comparable to or more stringent than this article shall be excluded from this definition and the provisions of this article. Any person or business who is unlicensed and claims to qualify for this exception bears the burden of proof to demonstrate that the exception is applicable.

Metered zone means and includes the cities and towns of Portland, South Portland, Scarborough, Gorham, Falmouth and Windham.

Taxicab means and includes any motor vehicle used for the transportation of passengers for hire, the destination and route of which are under the direction and control of the passengers. “Taxicab” does not include a limousine or livery vehicle as defined above, or a vehicle which operates solely on a fixed schedule and route such as, but not limited to, a bus.

Taxicab Driver shall mean any person who is engaged in the driving of a taxicab for hire.

Sec. 20-97. Applicability.

- (a) All provisions of this Article shall apply to taxicabs and liveries when their headquarters are located in the city and they provide any rides for hire within Westbrook.
- (b) The provisions of this article shall also apply to a taxicab business, duly licensed by another municipality where its headquarters are located to provide intra-city rides for hire in Westbrook and charge by the meter rate of such other licensing municipality.
- (c) Limousines operating within the city or based in the city are exempt from the provisions of this Article.
- (d) Livery operators that hold a current interstate operating authority from the Federal Motor Carrier Safety Administration and the liveries covered by such interstate operating authority are exempt from this Article. Failure to have a written prior reservation record at the time of pick-up, drop-off or conveyance of a passenger creates a rebuttable presumption that the vehicle and operator are required to be licensed as a taxicab under this Article. No livery shall operate as a taxicab nor accept passengers on a “hail” or walk-up basis even if such livery is covered by interstate operating authority or is licensed as a livery under this Article.

Sec. 20-98. Licenses.

- (a) *Business license.* Each taxicab or livery business, whether an individual, corporation, d/b/a, limited liability corporation, partnership, or other legal entity, shall obtain a taxicab or livery license from the city clerk prior to permitting the operation of any taxicab or livery vehicles in the city.
- (b) *Vehicle license.* Each taxicab or livery vehicle operated by a taxicab or livery business shall have a separate license.
- (c) *Driver’s license.* No person shall operate a taxicab or livery vehicle within the city unless such taxicab or livery is covered by a business license and the driver thereof is currently licensed by the city to operate a taxicab or livery.

20-99. Application.

Applications under this Article shall be filed in accordance with Chapter 20, Article I. In addition to the requirements of that section, each application shall contain the following for the appropriate license.

(1) Taxicab or livery business and vehicle licenses.

- a. Applications shall be signed and verified by each of the principal officers of the applicant if the applicant is a corporation, and in all other cases by all persons

having actual ownership interests in the applicant. The application shall state the name and address and date of birth of the principal officers of the applicant and of every person having management authority in the business of the applicant;

- b. A record of any disqualifying criminal conviction or a statement that no such conviction exists shall be provided for any officers or person having an actual business ownership in the business;
- c. The make, type, year, serial number and license plate number of each vehicle for which a taxicab or livery business license is sought and the address of the garage or other terminal at which the vehicle will be stationed when not in service shall be stated;
- d. A detailed description of the graphic design, insignia, wording and coloring which will appear upon the vehicle, if licensed, shall be included;
- e. An appropriate form of statement over the signature of each person signing the application, giving all persons and governmental agencies having information relevant to the above items permission to release the same to the City of Westbrook;
- f. A person or business may obtain both a livery and taxicab business license, but there shall be a separate application form and fee for each such license. A vehicle shall not be licensed nor used both as a taxicab and a livery vehicle.

(2) Taxicab or livery drivers' licenses.

- a. Date of birth;
- b. State current contact information, including home and work address, and home, work and cellular telephone numbers, and e-mail address if available;
- c. A complete record of the applicant with respect to any disqualifying criminal conviction or a statement that no such conviction exists;
- d. A record of all convictions for reckless driving, driving to endanger, operating or attempting to operate under the influence;
- e. All motor vehicle offenses during the five (5) years preceding the application;
- f. State whether any driver's license held by the applicant is presently revoked or has been revoked and the reasons for such revocation or revocations;
- g. A statement from a physician licensed to practice medicine in the State of Maine indicating the applicant's fitness to safely operate a motor vehicle. This shall also be a requirement for license renewals;
- h. The application shall contain an appropriate form of statement over the signature of the applicant giving all persons and governmental agencies having information relevant to the above items permission to release the same to the City of Westbrook;
- i. The application shall be accompanied by two (2) photographs of the applicant of such size as the city clerk may specify; and

- j. An applicant may obtain both a taxicab and a livery driver's license but there shall be separate application forms and fees for each such license. No person shall drive a taxicab or livery without having the appropriate license hereunder.

(3) Every business licensed hereunder must maintain current records of the names, home addresses and telephone numbers of all their drivers and must supply this information promptly to the city clerk upon request. Every driver required to be licensed hereunder must have a current license for the vehicle he or she drives, and must notify the city clerk promptly of any change in the contact information listed on their application.

Sec. 20-100. Standards for denial.

In addition to those standards set forth in Sec. 20-8, a license under this division shall be denied for the following persons:

(1) Taxicab or livery business licenses:

- a. A corporation which is not licensed to do business in the state;
- b. An applicant other than the registered owner of the vehicle;
- c. A corporation if any principal officer thereof or any person having actual ownership interest therein has a disqualifying criminal conviction;
- d. An applicant, other than a corporation, if such applicant, any principal officer, or any person having an actual ownership interest or management authority therein has a disqualifying criminal conviction; and
- e. Any applicant whose taxicab or livery business license has been revoked within the three (3) years preceding the application.

The city clerk shall make and keep a written record of every decision to deny an application for a taxicab or livery business license in the manner required by Title 1 M.R.S.A., Chapter 13.

(2) Taxicab or livery drivers' licenses:

- a. An applicant who has not attained the age of eighteen (18) years;
- b. An applicant who has a disqualifying criminal conviction as set forth in Section 20-9(c) or any of the following:
 - 1. For a period of one (1) year for an applicant who has a record of repeated minor traffic offenses that are not criminal violations. "Repeated minor traffic offenses" hereunder means more than two motor vehicle moving violations within the twelve (12) months prior to the date of application, or more than five (5) moving traffic violations within the thirty-six (36) months prior to the date of application, with at least one of those offenses occurring within the twelve (12) month prior to the date of application. In the case of these non-criminal traffic offenses, the twelve (12) month disqualification period shall begin as of the date of the finding of violation of the most recent offense. Notwithstanding the foregoing, any motor vehicle moving violation which results in bodily injury or property damage shall be considered a major offense hereunder.
 - 2. For a period of one (1) year from the date of reinstatement of a license which has been suspended or evoked in any jurisdiction, with the following exceptions:

- i. Where a license suspension results from the failure to file insurance with the Secretary of State pursuant to 29-A M.R.S.A. Chapter 13 (or other applicable law) or an order of court, the applicant must provide the director with (1) proof of valid insurance; and (2) documentation of the reinstatement of the applicant's driver's license. Following such proof, the license suspension shall not disqualify the applicant from receiving a taxicab or livery driver's license, provided there is no other disqualifying condition.
 - ii. Where a license suspension results from the failure to pay child support pursuant to 19-A M.R.S.A. Chapter 65 (or other applicable law) or an order of the court, the applicant must provide the city clerk with documentation of reinstatement of the applicant's driver's license. Following such proof, the license suspension shall not disqualify the applicant from receiving a taxicab or livery license, provided there is no other disqualifying condition.
3. For a period of four (4) years from the date of discharge of the sentence for the most recent conviction for reckless driving, driving to endanger or operating a motor vehicle under the influence of intoxicating liquor or drugs more than one (1) time in the preceding ten (10) year period, regardless of the class of the offense and regardless of any lesser disqualification which might otherwise apply hereunder.
 4. For a period of five (5) years from the date of the discharge of the sentence for the most recent conviction for reckless driving, driving to endanger or operating a motor vehicle under the influence of intoxicating liquor or drugs, which act was committed while operating any vehicle licensed under this chapter, or which act resulted in bodily injury.

Where an applicant for a taxicab or livery driver's license or a licensee has more than one (1) disqualifying criminal conviction as set forth in Sec. 20-9(c) or this section within the previous ten (10) years, the applicant shall be disqualified for the longest applicable period of time. If an applicant receives a subsequent disqualifying criminal conviction during a period of disqualification for another offense, the disqualification period for the subsequent offense shall run from the date of the discharge of the sentence for the subsequent conviction. If the disqualification period for the subsequent offense extends beyond the initial disqualification period, then the applicant shall remain disqualified for such additional time period.

The city clerk shall make and keep a written record of every decision to deny an application for a taxicab or livery driver's license in the manner required by Title 1 M.R.S.A., Chapter 13.

Sec. 20-101. Conditions precedent to issuance.

Prior to issuance of any taxicab or livery vehicle license, and in addition to all other requirements of Chapter 20, the following must occur:

- (a) For any business license, the applicant must file with the city clerk:
 1. A copy of the applicant's valid state certificate of registration of the vehicle to be licensed;
 2. A copy of the insurance policy covering the vehicle for the term of the license and executed by an insurance company authorized to issue such policies in this state in the usual form of vehicle liability insurance

policies in this state for injuries to persons and property resulting from the use and operation of the vehicle to be licensed. Such policy of insurance shall be issued for a principal sum sufficient to provide indemnity in an amount of not less than four hundred thousand (\$400,000.00) combined single limit, for bodily injury, death and property damage. A certificate of insurance bearing an endorsement thereon by the issuing agent shall be deposited with the city clerk and shall be maintained in effect throughout the license period. Such certificate shall state that the issuing agent shall notify the city clerk in writing no less than thirty (30) days prior to the cancellation thereof;

3. In the case of a taxicab only, a valid certificate of inspection issued by the state sealer of weights and measures is needed; and
4. An annual inspection of the taxicab by the Police Chief or the Police Chief's designee. A certificate shall be issued by the inspector indicating that the vehicle to be licensed complies with the safety and equipment requirements of the article.

(b) For any driver's license, the applicant must file with the city clerk a copy of a valid State of Maine driver's license. In addition, the city clerk shall obtain a current criminal history report from the state bureau of identification and a driving record from the state department of motor vehicles.

Sec. 20-102. Equipment.

General requirements

- (1) All taxicabs and liveries shall submit to random vehicle inspections by the Police Chief or the Police Chief's designee, in addition to the city's required annual inspection.
- (2) Taxicabs and liveries shall be at all times clean and in good repair inside and out. "Clean and in good repair" shall mean and include, without limitation, the following:
 - a. No visible tears in carpeting;
 - b. No dents larger than six (6) inches in diameter;
 - c. No tears in seat upholstery;
 - d. No loose trash or large amounts of dirt or sand in the interior passenger area, whether or not the area is currently occupied by a passenger;
 - e. No missing trim or body work;
 - f. No cracks in windshield or windows;
 - g. Seat belts for all passenger seats visible and in working order;
 - h. No missing hubcaps;
 - i. No visible primer paint;
 - j. No rust greater than one (1) inch in diameter; and
 - k. An operation jack and inflated spare tire.

- (3) Taxicabs and liveries shall be maintained at all times in compliance with the laws of the state relating to passenger vehicles and the rules and regulations of the state enacted pursuant thereto.
- (4) Taximeters. Taxicabs shall be equipped with taximeters which have been tested, approved and sealed by the state sealer of weights and measures, and which shall indicate fare and mileage by means of legible figures which are electrically illuminated during the period between sunset and sunrise, which fare shall be computed in accordance with the rate card and shall be calibrated the same fraction of a mile as the maximum fare provided in section 20-105. Taximeters shall be so placed that the figures are in plain view of all passengers. Taximeters shall be connected directly to and be driven directly from the transmission by means of flexible shafts and flexible housing so connected and sealed as to not be subject to tampering.
- (5) Exterior light. Every taxicab shall be equipped with an exterior light affixed to the roof thereof which shall be covered with a translucent fixture marked with the word "Taxi" in legible lettering and which shall be operated during the period between sunset and sunrise. A livery vehicle is prohibited from having an exterior light.
- (6) Notice to the public. Every taxicab and livery shall conspicuously display the following rules and regulations to notify the public of the requirements of all taxicab and livery vehicles;
 - a. For taxicabs only, maximum fare schedule;
 - b. Smoking is not permitted in any taxicab or livery vehicle at any time;
 - c. Taxicab or livery driver permit, with picture ID shall be prominently displayed within the vehicle;
 - d. The operator of each taxicab or livery shall conduct himself in a courteous and professional manner at all times; and
 - e. No person other than the driver is permitted to remain in the taxicab or livery at any time without the express consent of all passengers.
- (7) Identification. Every taxicab shall be conspicuously, professionally and permanently marked in letters not less than one and one-half (1 ½) inches in height with the word "Taxicab" and the owner's name or trade name or, in lieu of such name or trade name, with a design or monogram containing the owner's name or trade name. Such design or monogram shall be not less than eight (8) inches in diameter. The identification required hereunder shall be placed, at minimum, on the two front doors of the vehicle. Livery vehicles are required to be similarly marked as "Livery", and the words "taxi", "cab" or "taxicab" cannot be used in such marking.

Sec. 20-103. Conduct of driver.

When transporting passengers, all licensees shall be neat and clean in appearance. All articles of clothing shall be clean and in good repair.

Sec. 20-104. Smoking in vehicle.

Smoking is not permitted in any taxicab or livery vehicle at any time, including times when there are no passengers in the vehicle or when the vehicle is not in operation as a taxicab or livery.

Sec. 20-105. Taxicab Fare schedule.

- (a) *Within the metered zone.* Except as otherwise provided herein, the maximum fare for taxicab service solely which begins or ends in the city and is within the metered zone shall be one dollar and ninety cents (\$1.90) for the first one-tenth of a mile (the “drop” rate) or a fraction thereof and thirty cents (\$0.30) for each one-tenth of a mile or fraction thereof, thereafter. The fare shall be computed and displayed by the taximeter. No fare charged shall be in excess of the amount displayed by the taximeter. There shall be one (1) fare, divided equally, in the case of two (2) or more passengers who engage the taxicab for a trip between the same two (2) points. In all other cases, each passenger shall pay a separate fare, based upon the total taximeter rate to their individual destinations.
- (b) *Outside metered zone.* If a trip begins or ends within the city, and the other point of destination is outside the metered zone, the passenger and driver shall agree upon the fare before the trip commences; otherwise, the passenger shall be under no obligation to pay any fare.
- (c) *Waiting time.* A charge for waiting time may be made only for time waited at the express direction of the passenger after the trip has begun and for time waited before the trip has begun, commencing five (5) minutes after the time at which the passenger has requested the taxicab to call, or five (5) minutes after the taxicab actually calls, whichever is later. The charge for such waiting time shall be forty cents (\$0.40) per minute. No charge shall be made for delay due to the inefficiency of a taxicab or its driver, traffic delay, or for the time between premature arrival and the hour for which the taxicab was ordered.
- (d) *Bags and parcels.* No charge shall be made for the transportation of the bags or parcels of a passenger.

Sec. 20-106. Order of taxicab or livery vehicle from service.

- a. Any law enforcement officer may require any licensee to present a taxicab or livery for inspection whenever the officer deems such inspection necessary because of a serious threat to the health or safety of passengers and may, in writing, order a taxicab or livery business licensee to remove from service any taxicab or livery which is in violation of this article; provided that a re-inspection shall be scheduled as soon as possible but in no case more than three (3) business days thereafter. The licensee shall pay a reinspection fee as set forth in the Master Fee Schedule attached hereto as Appendix B for each time a reinspection is required of any taxicab or livery ordered removed from service hereunder.
- b. Any law enforcement officer shall order a taxicab or livery business licensee or taxicab operator to immediately remove from service, or shall immediately impound, any taxicab or livery which does not exhibit a taxicab or livery decal issued pursuant to Section 20-102.

Any licensee aggrieved by an order made under this section may appeal at any time to the city clerk who shall, as soon as possible, and in no case more than five (5) business days thereafter, determine whether such taxicab or livery is in violation of this article and shall either affirm the order of the law enforcement officer or give the licensee written permission to return the taxicab or livery to service. Notwithstanding any other provision of this article, the license of any

licensee charged with operating a taxicab or livery which the city clerk has ordered out of service shall be suspended in accordance with Section 20-8, and shall either be suspended or revoked upon a finding, after notice and hearing by municipal officers, that the violation has in fact been committed.

Sec. 20-107. Log; customer receipt.

- (a) Each person licensed as a taxicab or livery business or driver hereunder shall maintain a log of all calls received and services provided, specifying the date, time, name, if available, and the pickup and drop-off location of each transport which either begins or ends within the metered zone. Such log shall be provided to the city clerk or law enforcement officer upon request or may be examined by the city clerk or officer during regular business hours of the business.
- (b) Each person licensed as a taxicab or livery business or driver hereunder shall provide a receipt to any customer upon that customer's request. Such receipt shall show, at minimum, the date and time of the service provided, the name of the taxicab or livery company, and the cost thereof.

Sec. 20-108. Fees.

Fees shall be provided under the Master Fee Schedule attached hereto as Appendix B.

Sec. 20-109. Transfer.

Notwithstanding any other provision of this article, and in lieu of any other fee, a taxicab or livery business license may transfer a vehicle license to another vehicle for the unexpired term thereof upon payment of a fee of twenty-five dollars (\$25.00), and upon relinquishment to the Clerk of the license previously issued to the corresponding taxicab or livery vehicle, provided that the license application has been filed pursuant to Sec. 20-99.

Sec. 20-110. Automatic revocation or suspension.

- (a) *State of Maine driver's license.* No taxicab or livery driver's license shall be effective for the purposes of this division during any period in which the state driver's license of the licensee is suspended or revoked.
- (b) *Obligation of taxicab or livery driver.* It is the obligation of the licensed taxicab or livery driver to notify the city clerk of any suspension or revocation of his or her state driver's license and to return his or her taxicab or livery driver's license to the city clerk within fourteen (14) calendar days of such suspension or revocation. It is a violation of this ordinance for a licensee to continue to operate a taxicab or livery vehicle after suspension of his or her state driver's license and the taxicab or livery driver's license shall be suspended for up to a maximum of one year from the date of the finding by the director of such violation by a licensee, in addition to any other penalty which may apply under this Article. A copy of this paragraph shall be printed on the city's taxicab and livery driver's license application.
- (c) *Obligation of business licensee.* It is a violation of this ordinance for a business licensee to knowingly employ a driver who does not hold a valid state driver's license or a driver's license required hereunder and to permit him or her to operate a vehicle licensed hereunder, and such business licensee shall be subject to a suspension of all licenses issued hereunder to that person for the duration of each current license and up to one (1) year thereafter for each license. Any person permitted to drive any

taxicab or livery vehicle of the business licensee shall be considered to be “employed” by said business licensee for purposes of this paragraph, however that person is designated, including but not limited to, an employee, independent contractor, lessee.

Sec. 20-111 – 20-114. *Reserved.*

ARTICLE XII. MESSAGE ESTABLISHMENTS

Sec. 20-115. Definitions.

Massage or massage therapy. Massage or massage therapy is any method of rubbing, kneading, tapping, vibrating, compressing, percussing, applying friction, or manipulating the external parts of the human body with the hands or other parts of the body or with the aid of any instruments or device.

Massage establishment. Massage establishment is any business, including a sole proprietorship, in which the business operations consist of providing or making available massage in the city for consideration or with the expectation of receiving consideration or any gratuity, whether or not the business has a fixed place of business within the city limits.

Massage therapist. Massage therapist is a person who provides or offers to provide massage for a fee, monetary or otherwise.

Client. Client is any person who received a massage or who retains a massage therapist for that purpose.

Recognized school. Any school or institution of learning approved or accredited by the American Massage Therapy Association/Commission on Massage Training Accreditation/Approved (AMTA/COMTAA), Associated Bodywork & Massage Professionals/International Massage & Somatic Therapies Accreditation Council (ABMP/IMSTAC), or a school or institution requiring training equivalent to or surpassing an AMTA/COMTAA-approved or ABMP/IMSTAC-approved school, which offers a course of training in the theory, method, profession and work of massage therapy consisting of five hundred (500) hours or more, the completion of which renders a student eligible for membership in the AMTA or ABMP. Schools which cannot be verified shall not be deemed a recognized school. The burden of proving that a school meets or surpasses the educational training requirements of an AMTA/COMTAA-approved or ABMP/IMSTAC-approved school shall be on the applicant. (Ord. of 8-3-92)

Sec. 20-116. License required.

- (a) No person shall operate a massage establishment without obtaining and maintaining a valid massage establishment license from the city as set forth in Sec. 20-1 – Sec. 20-30.
- (b) No person shall work as a massage therapist, including one holding a massage establishment license, without having a valid massage therapist license from the city as set forth in Sec. 20-1 – Sec. 20-30, except that members of the AMTA, members of the AMBP or students in a recognized school who are required to give massages as part of their training shall not be required to obtain a massage therapist license.

- (c) No person shall work as a massage therapist without holding a valid license from the State of Maine Department of Professional and Financial Regulation, as required by 32 M.R.S.A. Section 14306-6 and Maine Code of Regulations, 2-41, Chapters 100-400, Rules Relating to Massage Therapists, as may be amended from time to time. A copy of such license shall be submitted with the application for a City massage therapist license.
- (d) No person shall operate a massage establishment or work as a massage therapist without being in full compliance with all other requirements of Maine law.
- (e) A sole practitioner who employs no other massage therapist may apply for a combined massage therapist/establishment license in lieu of obtaining both a massage therapist and massage establishment license from the city. (Ord. of 8-3-92)

Sec. 20-117. Exemptions.

The following persons shall be exempt from this chapter if duly licensed by, and while practicing in accordance with, the laws of this state:

- (a) Physicians;
- (b) Physicians' assistants;
- (c) Surgeons;
- (d) Osteopaths;
- (e) Nurses;
- (f) Chiropractors;
- (g) Physical therapists;
- (h) Barbers; (for scalp, arm & hand massages)
- (i) Beauticians. (for scalp, arm, hand, lower leg & foot massages)
- (j) Cosmetologists (for scalp, arm, hand, lower leg & foot massages);

(Ord. of 8-3-92)

Sec. 20-118. Reserved.

Sec. 20-119. Standards for denial, suspension or revocation.

The municipal officers, in addition to other provisions of this code authorizing such action, may deny, suspend, or revoke a license upon stipulations set forth in Sec. 20-8 as well as any of the following grounds:

- (a) The massage establishment, massage therapist, or clients thereof, have caused, or likely will cause, a breach of the peace;
- (b) Permitting any person to perform massage therapy without a license to do so, except as specifically allowed by Section 20-116(b); permitting anyone to perform massage therapy who has a disqualifying criminal conviction as set forth in Section 20-9(c) or Section 20-119(d) whether or not that person is exempted from the massage license requirements of Section 20-116(b); or otherwise allowing an employee or other massage therapist to violate any provision of this article on the premises of the establishment or in the course of conducting business;

(c) Knowing, participating in or permitting any violation of Title 17-A M.R.S.A. §§ 251-261, 851-855; or

(d) Conviction of any crime involving theft.

(Ord. of 8-3-92)

Sec. 20-120. Restrictions.

In addition to any limitations imposed on a licensee by the municipal officers or by the Code, the following shall apply throughout the term of any license:

- (a) No massage therapist shall administer, or be allowed to administer, a massage to a client whose genitals are showing;
- (b) No massage therapist shall engage in, agree to, or be permitted to administer a massage to the genitals or anus of a client;
- (c) No massage therapist shall administer or be permitted to administer a massage unless he or she is fully clothed in non-transparent clothing;
- (d) No person, to his/her own or another's benefit, shall make use of a license which has not been duly issued to them;
- (e) A valid massage establishment license shall be conspicuously displayed at all times in the place of business. A valid massage therapist license must be readily available upon demand;
- (f) All massages shall be administered on a massage table, treatment table, or treatment mat;
- (g) Every person who operates or conducts business in a massage establishment shall keep the premises, equipment, and supplies in a clean and sanitary condition;
- (h) A massage establishment shall keep a written list of all employed massage therapists and their current addresses, which list shall be shown to the Chief of Police or City Clerk upon request; and
- (i) No massage establishment shall be kept open for massage purposes between the hours of twelve (12) midnight and six (6) a.m.

Sec. 20-121. Enforcement.

The violation of any provision of this section shall be punishable by the fine set forth in the Master Fine Schedule attached hereto as Appendix C. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the city may seek injunctive relief in a court of competent jurisdiction.

(Ord. of 8-3-92)

Sec. 20-122 – 20-125. Reserved.

(Ord. of 6-3-13)

ARTICLE XIII. AUTOMOBILE SALVAGE YARDS & JUNKYARDS

Sec. 20-126. License required for automobile salvage yard or junkyard.

No person, firm, corporation or association shall operate an automobile salvage yard or junkyard on any premises under his, her or its charge, custody or control without first having obtained a license per the requirements set forth in Sec. 20-1 – Sec. 20-30 and 30-A M.R.S.A. § 3751-3760.

Sec. 20-127 - 20-130. Reserved.

ARTICLE XIV. COMMERCIAL HAULERS

Sec. 20-131. Permits; fees; revocation.

All commercial haulers collecting refuse within the city shall secure a license per Sec. 20-1 – Sec. 20-30.

Sec. 20-132. Refuse to be secured on transporting vehicles.

All refuse must be fastened, secured, confined, covered or loaded on transporting vehicles to prevent any portion thereof from falling to the ground prior to it being deposited at a demolition debris site or recycling facility.

Sec. 20-133. Standards for denial, suspension, or revocation.

The municipal officers, in addition to other provisions of this code authorizing such action, may deny, suspend, or revoke a license upon stipulations set forth in Sec. 20-8 as well as any of the following grounds:

- (a) Conviction of an environmental crime; or
- (b) Motor vehicle offenses within five (5) years prior to the application date unless those offenses were felonies in which case no time limit shall apply. This shall apply to drivers only.

Sec. 20-134 – 20-135. Reserved.

ARTICLE XV. VEHICLE TOWING

Sec. 20-136. Purpose.

In order to protect persons who operate motor vehicles within the city limits, to insure that the streets, public ways, and public property remain open and free of hazard to the public, and to further effectuate the efficient enforcement of the city's traffic, parking, snow removal, and other ordinances, it is necessary to license and regulate those businesses providing vehicle wrecker or towing services at the request or direction of the city. (Ord. of 1-19-93)

Sec. 20-137. Definitions.

In addition to the words elsewhere defined in the code of ordinances, the following terms shall have the meaning ascribed thereto, unless otherwise indicated:

Permanent place of business. Any building or permanently affixed structure which is owned or held under a lease or ascertainable rental agreement at the time the business is commenced,

and which, for the purposes of this Article, is used in whole or in part for the purpose of engaging in vehicle towing.

Towing list. A list maintained by the police department, containing the names of not more than nine (9) wreckers licensed by the city to respond to police requests for vehicle towing.

Wrecker. A business engaged in, or offering the services of, a vehicle wrecker, tow truck or carrier, whereby motor vehicles are or may be towed or otherwise removed from one place to another by the use of a motor vehicle specifically adapted to and designed for that purpose.

(Ord. of 1-19-93; Ord. of 3-4-96; Ord. of 11-5-01)

Sec. 20-138. Towing List.

No wrecker shall be eligible for placement on the city's towing list without having obtained and maintained a valid wrecker license from the city as set forth in Sec 20-1 – Sec. 20-30. (Ord. of 1-19-93; Ord. of 11-5-01). The ownership and the payment of fees, for additional tow vehicles used in association with the tow list shall not entitle the wrecker company to additional positions on the towing list rotation. (Ord. of 1-19-93; Ord. of 3-4-96; Ord. of 11-5-01; Ord. of 11-25-02)

Sec. 20-139. Application procedure.

Applications for the wrecker license shall be procured from the city clerk's office, completed and signed by the applicant, and filed with the clerk. The following shall be submitted with the application:

- (a) Proof that the applicant is a legally-organized business. This may include copies of deeds, leases, rental agreements, and Assessor's records; business filings with the Secretary of State; addresses shown on federal and state tax filings; copies of insurance coverage for the premises and for the employees therein; advertising; and motor vehicle registrations;
- (b) Evidence that each applicant owns/leases and operates its' own wrecker(s). A copy of any tow vehicle registration, title and lease, where applicable, shall accompany the application;
- (c) Evidence that the wrecker maintains a safe and legal storage facility for those vehicles towed at the request of the Westbrook Police Department during emergencies or without the owner's knowledge or consent;
- (d) Evidence that the wrecker maintains satisfactory levels of insurance to satisfy claims arising out of the towing or storage of motor vehicles;
- (e) Evidence that the wrecker and its employees or agents are available on a 24-hour, 365-day per year basis to ensure that towed vehicles may be released within one hour of demand by the owner who has cash to pay all fees;
- (f) Copy of driver's license of all employees operating wreckers in response to calls from Westbrook Police Department.

(Ord. of 1-19-93; Ord. of 11-5-01)

Sec. 20-140. Investigation.

Required certificates of insurance, vehicle(s) title/lease and registration and required evidence of business organization shall be submitted with the required application as set forth in Sec. 20-1 – 20-30. The inspecting officers shall investigate the applicant's compliance with the

minimum regulations for wreckers and compliance with the zoning ordinance. (Ord. of 1-19-93; Ord. of 3-4-96; Ord. of 11-5-01)

Sec. 20-141. Standards for denial, suspension, or revocation.

The municipal officers, in addition to other provisions of this code authorizing such action, may deny, suspend, or revoke a license upon stipulations set forth in Sec. 20-8 as well as any of the following grounds:

- (a) The wrecker has violated any of the requirements set forth herein;
- (b) The city is not satisfied with the general services of the wrecker or its employees or with the cooperation it has received when services are rendered; or the applicant's business otherwise has been the source of consumer complaints;
- (c) Conviction of any crime involving theft; and
- (d) Motor vehicle offenses within five (5) years prior to the application date unless those offenses were felonies in which case no time limit shall apply. This shall apply to towing vehicle drivers only.

(Ord. of 1-19-93; Ord. of 11-5-01)

Sec. 20-142. Ongoing requirements.

The following minimum regulations must be met on a continuous basis:

- (a) Each registrant shall be a legally organized business, having a place of business, i.e., an office located in a conforming zoning district or operating as a legal non-conforming use under the zoning ordinance, from which the business and wrecker vehicle operate, and having a storage location for all vehicles towed by that company which also must be within five (5) air miles of 570 Main Street.
- (b) Each registrant shall own/lease and operate its own wrecker(s), which for the purposes of this ordinance, must be used exclusively by the licensed wrecker business. Registrant shall supply the chief of police such other evidence as he shall require that demonstrates that the wrecker vehicle will be used exclusively by that single wrecker business in connection with the towing list rotation.
- (c) Each wrecker business shall maintain its own, separate insurance coverage for place of business, storage facility, wrecker vehicles, and employees, indicating the following coverages:
 - (1) *Garage keeper's policy* - covering fire, theft, windstorm, vandalism, and explosion, in the amount of at least \$35,000.
 - (2) *Garage keeper's liability policy* - covering the operation of the applicant's business, equipment, and vehicles for any bodily injury or property damage. This policy shall be in the minimum single limit amount of \$100,000.
 - (3) *Road service liability* - covering the lifting, hoisting, and towing of vehicles in the minimum amount of \$35,000.
 - (4) *Notice* – Each policy shall contain an endorsement by the carrier providing thirty (30) days notice to the city in the event of any change in coverage.

- (d) By the act of accepting a wrecker licensed, each licensee agrees that it will defend, indemnify, and hold harmless the city, its officers and employees from all claims for damages, including the reasonable cost of defense and attorney's fees resulting from the towing or storage of vehicles under this ordinance.
- (e) Each wrecker shall maintain such records as may be required by the chief of police and shall permit their inspection during normal business hours.
- (f) Each wrecker shall permit the chief of police or his designee to conduct regular inspections of each towing vehicle and each storage area during normal business hours.
- (g) Licensees shall arrive at the scene with thirty (30) minutes (or as soon as practical given weather and road conditions) of receipt of a request for service from the police department.
- (h) Vehicles must be towed, not driven, to the designated storage facility.
- (i) At the request of the police, a wrecker business shall clean the accident area of any debris resulting from the accident.
- (j) Each wrecker vehicle used in conjunction with this ordinance shall be permanently lettered with the company name and phone number of the licensed wrecker business.
- (k) Any changes in insurance coverage, tow vehicles, storage location, or employees shall be reported to the city clerk within five (5) days of the change. A copy of any new employee's driver's license must accompany the notice.

(Ord. of 1-19-93; Ord. of 3-4-96; Ord. of 11-05-01)

Sec. 20-143. Wrecker selection procedure.

(a) Those wreckers that have been licensed by the municipal officers shall be placed on the towing list, which shall be utilized in those instances in which a vehicle is to be towed from a public way or public property or from any private property at the request or direction of the city. Each wrecker business shall maintain a separate telephone number that may be used by the police dispatcher when selecting a wrecker and at which the car owner can contact the wrecker business to secure the return of their vehicle.

(b) When a request for vehicle towing is received at the police department, the dispatcher or his/her supervisor shall select the name of the wrecker which next succeeds the last wrecker called for towing services. Such wrecker selections shall proceed in a rotating manner until the end of the list is reached, at which point wreckers shall again be selected from the top of the list, consecutively.

(c) In the event that a wrecker does not respond to a phone call from the police department or otherwise does not respond to the scene in a timely manner, the next name on the towing list shall be called. Then, should more than one wrecker respond to the scene, the last one called from the police department shall be entitled to the tow. Any wrecker called shall not be called again until its name next appears in the rotation.

(d) Those wreckers who operate more than one towing vehicle shall be selected only once during each rotation of the towing list.

(e) No tow truck, wrecker, or carrier used by one wrecker business to respond to police requests for towing may be used by any other registrant in connection with the towing list, irrespective of any business organization, lease/title, vehicle registration, or other agreement by

which registrants might otherwise share the use of a wrecker vehicle. (Ord. of 1-19-93; Ord. of 3-4-96; 11-5-01)

Sec. 20-144. Other wrecker selection.

(a) No wrecker shall respond to the scene of an accident or other emergency unless specifically called there by the Westbrook police department dispatcher or the owner or operator of the vehicle involved. No wrecker, agent or employee, shall solicit towing contracts at the scene. However, nothing in this Article shall be construed as prohibiting a towing service from privately contracting with any person.

(b) In the event that a vehicle owner or operator requests a wrecker of his/her own preference, the police department will attempt to secure the services of the wrecker chosen, provided they are able to respond quickly if circumstances demand it.

(c) In the event that the vehicle owner or operator selects his/her own wrecker, then the towing list shall be disregarded, and the rotation shall remain unchanged. (Ord. of 1-19-93; Ord. of 11-5-01)

Sec. 20-145. Special conditions.

At his/her discretion, the chief of police or his/her designee may select a wrecker that does not appear in the towing list sequence when required by the exigent circumstances surrounding vehicle removal or the need for special equipment and procedures. (Ord. of 1-19-93)

Sec. 20-146. Nondiscrimination.

Notwithstanding the procedures set forth herein, nothing in this ordinance, or in the towing regulations previously in effect, creates a vested or exclusive right to be called or selected for a towing operation requested by an employee or official of the city. Nothing in the provisions contained herein is designed or intended to restrain the course of free trade or to restrict the number of qualified licensees on the towing list. (Ord. 1-19-93)

Sec. 20-147. Removal.

(a) The chief of police, upon notice and opportunity for hearing, is authorized to remove a wrecker from the towing list or otherwise suspend the privileges accorded hereby upon finding one of the following:

- (1) That the towing list registration was secured by fraud or by concealment of a material fact by the wrecker owner and such fact, if known, would have cause disqualification;
- (2) That the wrecker owner has violated any of the ongoing requirements established herein; or
- (3) That the city is not satisfied with the general services of the wrecker or its employees, or with the cooperation received when services are rendered.

(b) In the event that the chief of police removes a wrecker from the tow list, the company may appeal that action to the municipal officers. Should they reverse the decision, then the wrecker shall be entitled only to be placed back on its former place on the tow list.

Sec. 20-148. Rate schedule.

As an express condition of licensure, each wrecker shall charge no more than the fees found in the Master Fee Schedule, attached hereto as Appendix B, in those cases in which a vehicle has been towed and stored at the request of the police department. These fee restrictions apply to

automobiles towed to the authorized storage lots or police impound locations. Any vehicle towed to an alternative location at the request of the owner may be charged additional fees as negotiated prior to the tow.

The schedule of fees shall not be modified except by action of the city council.

(Ord. of 3-4-96; Ord. of 11-5-01)

Sec. 20-149 – 20-154 Reserved.

ARTICLE XVI. FARMER'S MARKET

Sec. 20-155. Definitions.

In addition to the words elsewhere defined in the code of ordinances, the following terms shall have the meaning ascribed thereto, unless otherwise indicated:

Farm Products. Product grown or produced by a farmer which shall consist of fruits, vegetables, seedlings, plants, cut flowers, eggs, apple cider, honey and maple syrup.

Farmer. A person who produces farm products.

Farmers Market. A public market at which farmers sell items they have produced directly to consumers.

Sec. 20-156. Market established; location.

There is hereby established a farmer's market the location, size and layout of which are to be determined by City Council order, after public notice and public hearing. (Ord. of 3-20-78, § 1; Ord. of 7-12-10)

Sec. 20-157. Operation; regulations.

The operation of said farmer's market shall be on Thursday and Friday of each week from April first, or three (3) days before Easter Sunday if sooner, to November thirtieth of each year between the hours of 6:00 a.m. and 6:00 p.m. for the sale of "farm products" in accordance with the following regulations:

- (a) *Permit; fee.* Any person who desires to sell farm products in said farmer's market shall first obtain a permit from the city clerk and pay the annual fee set forth in the Master Fee Schedule attached hereto as Appendix B. All applicants for said permits must file a certificate with the city clerk that he or she is engaged in the business of raising farm products and will abide by the regulations for the operation of the farmer's market.
- (b) *Saleable items.* The items to be sold at the farmer's market shall be limited to farm products. No resale of produce or other products is allowed.
- (c) *Operation of stall.* The holder of a permit shall retain and operate the same numbered stall or stalls assigned to him or her throughout the year for which the permit was issued and said permits shall not be transferable. Permit holder shall display their permit in a conspicuous place while operating the stall. He or she must operate said stall or stalls in accordance with all city and state health laws and regulations, and clean up the immediate area after the close of each day's business. The adjoining sidewalk and esplanade, if any, between the sidewalk and any adjacent street must be kept free and clear at all times and not be used for display or sale purposes. (Ord. of 7-12-10)

- (d) *Use of stall mandatory.* The failure of any permit holder to use the assigned stall space for the sale of farm products for a period of four (4) weeks per year shall be cause for the revocation of said permit, and all such spaces shall be operated at the risk of the holder of the city permit without any liability on behalf of the city.
- (e) *Suspension, revocation of permit; appeal.* The permit thus issued to any person may be suspended or revoked by the city clerk when, in his/her judgment, the person holding same has failed to comply with these regulations or has violated any city or state laws in the operation of his/her assigned stall space, subject to the right of appeal to the municipal officers. (Ord. of 3-20-78, § 2)

Sec. 20-158 – 20-160. Reserved.

ARTICLE XVII. TATTOO ESTABLISHMENTS

Sec. 20-161. Purpose.

The purpose of this ordinance is to regulate the operation of tattoo establishments in order to promote the public health, safety and general welfare.

Sec. 20-162. Definitions.

- (a) *Client.* Client is any person who receives a tattoo or who retains a tattoo practitioner for that purpose.
- (b) *Tattoo.* To insert pigment under the skin of a human being by pricking with a needle or otherwise, so as to produce an indelible mark or figure visible through the skin.
- (c) *Tattoo Establishment.* Permanent, non-dwelling premises where a Tattoo Practitioner performs tattooing.
- (d) *Tattoo Practitioner.* The person who places a tattoo on a human being, and is at least 18 years of age.
- (e) *Person.* Person means an individual, partnership, corporation or other entity.

Sec. 20-163. License required.

- (a) No person shall operate a tattoo establishment without obtaining and maintaining a valid tattoo establishment license from the city. A tattoo establishment shall keep a written list of all employed tattoo practitioners and their current addresses, which list shall be shown to the Chief of Police or City Clerk upon request.

Sec. 20-164. Application procedure.

Applications for licenses required by this article shall be procured from the city clerk's Office, completed and signed by the applicant, and filed with the clerk's office.

Sec. 20-165. State Compliance.

- (a) No person shall operate a tattoo establishment or work as a tattoo practitioner without holding a valid license from the State of Maine Department of Health and Human

Services, Bureau of Health, as provided under Maine Code of Regulations, 10-144, Chap. 210, Rules Relating to Tattooing, as amended from time to time.

- (b) No person shall operate a tattoo establishment or work as a tattoo practitioner without being in full compliance with all other requirements of Maine law.

Sec. 20-166. Reserved.

Sec. 20-167. Standards for denial, suspension or revocation.

The municipal officers, in addition to other provisions of this code authorizing such action, may deny, suspend or revoke a license upon one or more of the following grounds:

- (a) There has been a failure to fully complete the application forms or to pay any fee required hereunder; an incorrect statement of material fact has been made knowingly on such form; or there has been a knowing omission of material fact or additional documentation required or reasonably necessary to determine whether such license should be issued;
- (b) The applicant has been convicted of any offense listed in 34-A M.R.S.A. Section 11203(6)(B) within the five years immediately prior to the date of the application. Where there is a conflict between this provision and the disqualification provision of Section 20-9(c), the longer period of disqualification shall apply.
- (c) The applicant's business and professional reputation have been the source of client complaints affecting the public health, safety and welfare;
- (d) The licensee has violated any provision of this Code or Maine law in the course of operating a tattoo establishment or performing a tattoo, which event would have been the basis for denying the license originally;
- (e) The applicant's or licensee's real estate and/or personal property taxes, registration fees, sewer and other charges associated with the business are in arrears;
- (f) Failure to notify the clerk of any change of material fact set forth in the license application;
- (g) Permitting any person to perform a tattoo without a license to do so; permitting anyone to operate as a tattoo practitioner who has a disqualifying criminal conviction as set forth in Section 20-9(c) or Section 20-167(b);and
- (h) Knowingly participating in, or permitting any violation of, Maine laws regulating tattooing.

Sec. 20-168. Enforcement.

The violation of any provision of this section shall be punishable by the fine set forth in the Master Fine Schedule attached hereto as Appendix C. Each act of violation and every day upon which any such violation shall occur shall constitute a separate offense. In addition to such penalty, the city may seek injunctive relief in a court of competent jurisdiction.

Sec. 20-169. License fees.

- (a) The fees for licenses are set forth in the Master Fee Schedule attached hereto as Appendix B.
- (b) Said fees shall be paid at the time of application and are non-refundable.

Sec. 20-170 – 20-171. Reserved.

(Ord. of 4-7-2008; 6-3-13)

ARTICLE XVIII. STATE LIQUOR LICENSE APPLICATIONS

Sec. 20-172. Submitting of application for license.

All state liquor license applications submitted to the city clerk shall be forwarded to the Police Department for an investigation. A history of calls of service shall be conducted for the business location if the application submitted is for renewal. A background investigation of the applicant's criminal history shall be conducted for new applications if an investigation has not been done for any other city business license. The applicant shall be responsible for paying the background investigation fee set forth in the Master Fee Schedule attached hereto as Appendix B. The application with the findings shall be sent to Municipal Officers for approval.

Sec. 20-173. Public hearings on certain liquor license applications.

The municipal officers shall hold a public hearing on all new applications for on-premises liquor licenses and for all new applications for transfer of location of existing on-premises licenses and for all such new applications if the identity of any of the individual licensees changes. The procedures for calling and conducting the public hearings, and the standards for acting on the applications, shall be as prescribed by State law.

The municipal officers may hold a public hearing for consideration of requests for renewal of such licenses, except that when a licensee has held a license for the prior 5 years without a liquor licensing complaint having been filed against him within that time period, then the applicant may request a waiver of the public hearing. The procedures for calling and conducting the public hearings, and the standards for acting on the renewal applications, shall be as prescribed by State law.

Notices of public hearings held on state liquor licenses shall be mailed to residents located within 500' of the applicant's business location.

Sec. 20-174. Reserved.

(Ord. on 11-03-2008)

(Adopted in entirety by Ord. on 02-02-2009)

ARTICLE XIX. PERMITS FOR SALES OF CONSUMER FIREWORKS

Sec. 20-175. Definitions.

Consumer fireworks. Those types of fireworks included in the definition set forth in 8 M.R.S.A. Section 221-A.

Sec. 20-176. Permit required

No person shall sell consumer fireworks without a permit issued by the City.

Sec. 20-177. Application procedure.

Applications for permits required by this article shall be obtained from the City Clerk's Office. Permits shall be issued by the City Clerk's Office if all of the requirements of Section 20-178 are met.

Sec. 20-178. Requirements.

- (a) An applicant for a permit to sell consumer fireworks must be at least 21 years of age.
- (b) An applicant for a permit to sell consumer fireworks must also have a federal permit to sell fireworks under 18 U.S.C. Section 843 and a state license issued under 8 M.R.S.A. Section 223-A(3) and must provide evidence of required permits and licenses to the City before issuance of the City permit.
- (c) An applicant for a permit to sell consumer fireworks shall show evidence of insurance coverage as required by 8 M.R.S.A. Section 223-A(5). Such insurance must be maintained throughout the term of the permit
- (d) A person selling consumer fireworks must provide proof of compliance with all applicable federal and state requirements, including but not limited to the storage and handling requirements set forth in 8 M.R.S.A. Section 223-A(4).
- (e) A separate permit shall be required for each location at which the applicant proposes to sell consumer fireworks.
- (f) The applicant shall pay a fee for the permit as established in the Master Fee Schedule in Appendix B to this Ordinance. Such fees shall be paid at the time of the application and are non-refundable.
- (g) Permits issued under this Article shall not be transferable.

Sec. 20-179. Suspension, revocation of permit; appeal.

A permit issued under this Article may be suspended or revoked by the city clerk upon any of the following:

(a) The permit holder is adjudged to be in violation of any applicable provision of state or federal law.

(b) The permit holder has had either its state license or federal permit suspended or revoked or has failed to renew either such license.

A permit holder may appeal a suspension or revocation to the municipal officers, but no permit shall be reinstated if the permit holder no longer holds a valid state license or federal permit or during any period during which such a license is under suspension.

Sec. 20-180. Enforcement.

Nothing in this Article shall serve as a limitation upon the enforcement authority granted to City law enforcement officials and the Code Enforcement Officer under 8 M.R.S. A. Section 223-A(9). The City may seize consumer fireworks that the City has probable cause to believe are sold in violation of this Ordinance and shall forfeit seized consumer fireworks to the State for disposal. (Ord. of 7-22-13)

Sec. 20-181 – 20-185. Reserved

(Ord. of 12-5-2011)

ARTICLE XX. USE OF CONSUMER FIREWORKS

Sec. 20-186. Definitions.

Consumer fireworks. Those types of fireworks included in the definition set forth in 8 M.R.S.A. Section 221-A.

Sec. 20-187. Permit required.

No person shall display, fire or cause to be exploded any type of consumer fireworks within the City of Westbrook without a permit issued by the Public Safety Department. This requirement shall not apply to any person with a fireworks display permit issued by the State of Maine under the provisions of 8 M.R.S.A. Section 227-A. Permits issued under this section are not transferable. The fee for such permits shall be as established in the Master Fee Schedule in Appendix B of this Code. No permit shall be issued on any day with a Fire Danger Class of 3, 4, or 5.

Sec. 20-188. Restrictions on use of consumer fireworks.

(a) A person may not use consumer fireworks in the City, except that the use of consumer fireworks shall be permitted on the following days and during the following times:

(1) July 4, beginning at 9:00 a.m. and ending at 12:30 a.m. on July 5.

(2) July 5, beginning at 9:00 a.m. and ending at 12:30 a.m. on July 6, if July 5 falls on a weekend; if July 5 falls on a weekday, beginning at 9:00 a.m. and ending at 10:00 p.m.

(3) December 31, beginning at 9:00 a.m. and ending at 12:30 a.m. on January 1.

(b) A person may use consumer fireworks only on that person's property or on the property of a person who has consented in writing to the use of consumer fireworks on that property. No person shall use consumer fireworks in any public street or park.

(c) No person shall display, fire or cause to be exploded any type of consumer fireworks within 20 feet of any building.

(d) No person under 21 years of age shall use or possess consumer fireworks.

Sec. 20-189. Enforcement.

Any person who uses consumer fireworks within the City in violation of this Article shall be subject to a civil enforcement action and a fine as established by the Master Fine Schedule in Appendix C of this Code. The City may seize consumer fireworks that the City has probable cause to believe are used in violation of this Ordinance and shall forfeit seized consumer fireworks to the State for disposal.

Sec. 20-190 – 20-194. Reserved

(Ord. of 7-22-13)

ARTICLE XXI. PAWNSHOPS AND PAWNBROKERS.

Sec. 20-195. Definitions.

Pawn transaction. The lending of money on the security of pledged tangible personal property that is delivered to a pawnbroker and held by the pawnbroker. The term also includes the purchase of tangible personal property on the condition that it may be repurchased by the seller for a fixed price within a fixed period of time.

Pawnbroker. A person who engages in pawn transactions.

Tangible personal property. Tangible personal property includes motor vehicles, but does not include documents evidencing title to motor vehicles. The term also does not include checks, drafts or similar instruments or real estate.

Sec. 20-196. License required; posting.

No person, firm or corporation shall engage in the business of a pawnbroker as herein defined without obtaining and maintaining a valid pawnbroker license from the City. Licenses shall be obtained in accordance with the requirements of Sec. 20-1 - 20-30. Once issued, licenses shall be posted in a conspicuous place at the licensed premises.

Sec. 20-197. Standards for denial.

In addition to those standards set forth in Sec. 20-8, a license shall be denied if an applicant has a disqualifying criminal conviction or otherwise fails to comply with the requirements of Sec. 20-9.

Sec. 20-198. Required recordkeeping.

Every pawnbroker, at the time of receiving any article pawned, pledged or received in exchange, or any other article or consideration, shall give the consumer a signed, written disclosure satisfying the requirements of 30-A M.R.S.A. § 3962(2), as may be amended from time to time, and shall complete a sworn statement, forms for which shall be furnished by or approved by the Police Chief or his/her designee, stating the full name, age, sex and address of the person with whom the transaction is being made, the day and hour when the transaction took place, and a full, accurate and detailed description including all distinguishing marks and numbers of each article so pawned, pledged or exchanged as will make its identification certain and plain; and the fair market value thereof and the price paid by the pawnbroker; the source from which and the time when the consumer procured the same, and cause such statement to be signed and sworn to by the person with whom such transaction has been made, and within forty-eight (48) hours after the transaction shall electronically report the relevant information contained in the sworn statement to the Police Chief or his/her designee, together with a digital photograph of any articles pawned, pledged or otherwise received by the pawnbroker. Before recording this information, the pawnbroker shall require reasonable written proof of the consumer's identification in the form of a motor vehicle operator's license, military identification card, adult state-issued identification card or similar item. The Police Chief or his/her designee may require that notice of transactions be provided in an alternative manner or to additional locations. The pawnbroker shall retain the statement and photograph in his or her possession, which, together with any article therein listed, may be inspected by any police officer at any and all times.

Sec. 20-199. Purchases from minors prohibited.

No pawnbroker shall directly or indirectly either purchase or receive by way of barter or exchange any goods or articles from a minor, knowing or having reason to believe him or her to be such, unless the minor is accompanied by his or her parent or guardian.

Sec. 20-200. Retention of purchased items.

Any article purchased outright by a pawnbroker shall be retained on the premises for not less than ten (10) days unless the Police Chief or his/her designee authorizes an earlier release of the article.

Sec. 20-201. Additional postings required.

In addition to the display of licenses required by this chapter 20 for all licensees, every pawnbroker shall post in a conspicuous location in his or her place of business a copy of the Maine statutes applicable to pawnbrokers and a copy of this Article.

Sec. 20-202. Requirements of State law.

Except to the extent that this Article contains a contrary provision, all provisions of 30-A M.R.S.A. §§ 3960-3964-A, as may be amended from time to time, shall be required in addition to the provisions of this Article.

Sec. 20-203 – 20-204. Reserved.

ARTICLE XXII. SECONDHAND DEALERS.

Sec. 20-205. Definitions.

Flea market shall mean any group of five (5) or more unrelated persons selling tangible used or secondhand personal property or collectors' items to the public.

Flea market operator shall mean any person who provides tables, space or otherwise operates a flea market.

Flea market seller shall mean any person who sells goods at a flea market.

Secondhand dealer shall mean a person, firm or corporation engaged in the business of buying, selling, exchanging, dealing in or dealing with secondhand articles, except for a person licensed as a flea market seller. In the event any such articles are taken in trade for another or similar article by a retail or wholesale establishment, such transaction shall not be considered as coming within the requirements of this Article.

Sec. 20-206. License required; posting.

No person, firm or corporation shall engage in the business of a secondhand dealer as herein defined without obtaining and maintaining a valid secondhand dealer license from the City. Licenses shall be obtained in accordance with the requirements of Sec. 20-1 - 20-30. Once issued, licenses shall be posted in a conspicuous place at the licensed premises.

Sec. 20-207. Standards for denial.

In addition to those standards set forth in Sec. 20-8, a license shall be denied if an applicant has a disqualifying criminal conviction or otherwise fails to comply with the requirements of Sec. 20-9.

Sec. 20-208. Required recordkeeping.

Every secondhand dealer, upon acquisition of any article either by purchase or exchange, shall complete transaction records, blanks of which shall be furnished by or approved by the Police Chief or his/her designee, stating the full name and address of the seller, the month, date

and year on which the transaction took place, and a full and detailed description of each article so purchased or exchanged together with any applicable identification numbers, with the price paid therefor, and cause such record to be signed by the seller in person. Before recording this information, the secondhand dealer shall require reasonable written proof of the seller's identification in the form of a motor vehicle operator's license, military identification card, adult state-issued identification card or similar item. The relevant information in the record shall be electronically or otherwise reported to the Police Chief or his/her designee, together with a digital photograph of the article purchased or exchanged, within forty-eight (48) hours thereafter, unless earlier electronically reported to a duly authorized police officer upon request. The Police Chief or his/her designee may require that notice of transactions be provided in an alternative manner or to additional locations. The secondhand dealer shall retain the record, including the photograph, in his or her possession for a period of not less than two (2) years, during which time the record may be inspected at any and all reasonable times by any police officer. The secondhand dealer shall also keep a record of any purchaser of a secondhand item, together with a description of the item purchased.

Sec. 20-209. Retention of purchased items.

Any article purchased by a secondhand dealer shall be retained on the premises for not less than ten (10) days unless the Police Chief or his/her designee authorizes an earlier release of the article.

Sec. 20-210. Purchases from minors prohibited.

No secondhand dealer shall directly or indirectly either purchase or receive by way of barter or exchange any goods or articles from a minor, knowing or having reason to believe him or her to be such, unless the minor is accompanied by his or her parent or guardian.

Sec. 20-211. Additional postings required.

In addition to the display of licenses required by this Chapter 20 for all licensees, every secondhand dealer shall post in a conspicuous location in his or her place of business a copy of the Maine statutes applicable to secondhand dealers, including but not limited to 30-A M.R.S.A. § 3971, and a copy of this Article.

Sec. 20-212. Requirements of State law.

Except to the extent that this Article contains a contrary provision, all provisions of 30-A M.R.S.A. § 3971, as may be amended from time to time, shall be additional to the provisions of this Article.

Sec. 20-213. Flea markets.

Any person who provides tables, space, or otherwise operates a flea market shall obtain a license from the City. There shall be no purchasing of goods by a flea market seller from any person, except another flea market seller at the flea market prior to the opening of the flea market to the general public. No food shall be sold at a flea market unless required licenses have been obtained. Any individual selling or working at a table or tables shall obtain a flea market seller's

license. Related individuals working at the same table or tables need only obtain one (1) flea market seller's license which lists all the individuals involved in selling. As used in this paragraph, "related individuals" shall mean and include persons who are related by either affinity or consanguinity and reside at the same address. Persons who sell only craft items made by the flea market seller shall not be required to obtain a flea market seller's license. The flea market operator shall exclude from participation in any flea market any person the operator knows is required to obtain a flea market seller's license who does not present proof of such licensing or whom the operator knows has been barred from selling under this section. No person under the age of eighteen (18) shall be permitted to sell goods or work as a flea market seller unless his or her parents or guardian have given permission.

Persons who are licensed as secondhand dealers must also obtain a flea market seller's license if they wish to participate in a flea market. Such licensed secondhand dealers shall at all times comply with the requirements of their secondhand dealer's license as well as the provisions of this section.

Sec. 20-214—20-215. Reserved.

Chapter 21

MOBILE HOMES AND MOBILE HOME PARKS

Article I. [In General](#), §§ 21-1 – 21-14

Article II. [Mobile Home Rent Justification Ordinance](#), §§ 21-15 – 21-20

ARTICLE I. IN GENERAL

Sec. 21-1. Definitions.

Mobile home. A vehicular, portable structure built on chassis of which wheels are an intrinsic part and are designed to remain so, and said structure being designed to be used without a permanent foundation as a dwelling for one or more persons, and provided with a toilet and a bathtub or shower. A mobile home shall contain not less than four hundred fifty (450) square feet of floor area.

Mobile home lot. That parcel of a mobile home park that provides facilities for long term occupancy of a mobile home and designed for the exclusive use of its occupants.

Mobile home park. A contiguous parcel of land that has a minimum area of twenty-five (25) acres and is plotted for the development of a minimum of twenty-five (25) mobile home lots which are to be rented or leased - not sold.

Mobile home stand. That part of an individual mobile home lot which has been reserved for the mobile home.

Permit, license. These words are used interchangeably. (Ord. of 10-6-70, § 1)

Sec. 21-2. General provisions.

(a) No mobile home shall be permitted to locate in a duly licensed mobile home park which does not meet the minimum standards set forth in publication A 119.1 of the United States of America Standards Institute dated 1969, as amended and subsequent revisions.

(b) Mobile home parks will be authorized for development only in zones where permitted by the zoning ordinance.

(c) This chapter shall not apply to unoccupied mobile homes held by dealers as stock-in-trade for sale or resale, or to mobile homes that are temporarily stored in buildings or garages or not visible from any public street or way, so long as they remain unoccupied.

(d) This chapter shall not fully apply to any mobile home park established prior to its effective date; provided, however, that the permit fees and all the health and sanitation requirements herein set forth (section 21-6(E)(1), (E)(2) and (F)) shall be applicable to such existing mobile home parks, and they shall not be altered or extended except in conformance with all the provisions of this chapter.

(e) Mobile home parks shall be located on a well drained site properly graded to insure rapid drainage and freedom from stagnant pools of water. The site shall not be exposed to objectionable smoke, noise, odors or any other adverse influences, and no portion subject to unpredictable sudden flooding subsistence or erosion shall be used for any purpose which would expose persons or property to hazards. Site planning should utilize terrain, existing trees and

shrubs and rock formations. A stylized pattern should be avoided; innovative park design is encouraged and provided for in section 21-8 of this chapter.

(f) A minimum of twenty-five (25) mobile home lots shall be completed and provided with all utilities, streets, and sidewalks as required by this chapter before occupancy of the mobile home park shall be permitted.

(g) A mobile home park shall not exceed a net residential density of six (6) mobile homes per acre.

(h) The mobile home stand shall provide for practical placement on and removal from the lot of the mobile home and retention of the home on the lot in a stable condition and in satisfactory relationship to its surroundings. (Ord. of 10-6-70, § 2)

Sec. 21-2.1. Mobile home standards and installations generally.

All mobile home units or structures shall meet the minimum standards set forth in Publication A 119.1 of the United States American Standards Institute, dated 1971, and subsequent revisions, and unless located in a mobile home park must comply with the following installation requirements before they can be used or occupied as a building:

- (a) The wheels and undercarriage must be removed and the mobile home must be placed on a foundation as specified in subsections (1) or (2) below.
 - (1) Wall-type foundation consisting of a ten (10) inch thick poured concrete wall supported by a twenty (20) inch wide by ten (10) inch deep footing ; the top of which is at least four and one-half (4 1/2) feet below grade.
 - (2) Slab-type foundation consisting of six (6) inch reinforced concrete slab on top of three (3) foot compacted and drained gravel sub base. An approved vapor barrier is to be used between the concrete and the sub base. A masonry wall, mortared or solid, must be constructed between the slab and the mobile home.
- (b) Either type of foundation enumerated in subsections (1) and (2) above must be vented. The wall-type foundation must have perimeter footing drains, and the gravel base of the slab-type foundation must have under drains. All such drains must be connected to the municipal storm sewer system or other appropriate drainage way approved by the building inspector.
- (c) An accessory building must be provided for storage and the fuel tank must be screened from view.
- (d) The exterior wall of all additions to the mobile home must be constructed of the same material and have the same appearance as the mobile home. (Ord. of 12-27-71)

Sec. 21-3. Permit required.

No person, firm or corporation shall establish, conduct, maintain or operate a mobile home park unless such person shall first obtain a permit issued annually by the building inspector. Existing mobile home parks must apply for and be granted a permit prior to July 1, 1971.

- (a) The building inspector, upon written application of any person, may issue or renew mobile home park permits to any such person upon compliance with the provisions of this chapter. The fee is set forth in the Master Fee Schedule attached hereto as Appendix B.

- (b) The applicant shall file with the application proof of ownership of the premises or of a lease or written permission from the owner.
- (c) Initial application for new or existing mobile home parks shall be accompanied by a preliminary plan in accordance with section 21-4(A) of this chapter.
- (d) The application for a permit to operate a new mobile home park or to expand an existing mobile home park shall be subject to the prior approval of the design by the planning board. Existing mobile home parks may be issued a permit by the building inspector provided such parks conform with all the health and sanitation requirements, referred to in section 21-2(e) of this chapter, even though such existing parks do not meet the design standards hereinafter set forth in this chapter, however, no existing mobile home park may be expanded until detailed plans are submitted to and approved by the planning board for the upgrading of the entire mobile home park in accordance with the provisions of this chapter.
- (e) The making of extensions or alterations without prior approval of the building inspector shall be cause of immediate revocation of the mobile home park permit. (Ord. of 10-6-70. § 3)

Sec. 21-4. Procedure for the submission and approval of plans.

(A) PRELIMINARY PLAN:

(1) *General.* A preliminary plan of a mobile home park shall be submitted to the planning board by the mobile home park developer. The planning board shall request a report from the city engineer in regard to grades, feasibility of drainage and sewerage, and character of road surfacing. The submission of such a preliminary plan will enable the developer, the planning board, other municipal agencies, and owners of property abutting the proposed or existing mobile home park to discuss and clarify the details of the development before a definitive plan is prepared. In submitting a preliminary plan, the developer shall give written notice by delivery or registered mail, to the city clerk, stating the date of submission of such preliminary plans.

(2) *Contents.* The preliminary plan shall be drawn on tracing paper at a suitable scale; three (3) prints shall be filed with the planning board. Said preliminary plan shall show sufficient information about the development to form a clear basis for discussion of its various aspects and for the preparation of the definitive plan. Such plan shall be clearly labeled as preliminary plan. The preliminary plan shall show the following information:

- (a) Development name, boundaries, north point, date and scale.
- (b) Names of the record owner, developer, and designer, engineer or surveyor.
- (c) Names of all abutters as they appear in the most recent tax list.
- (d) Existing and proposed lines of streets, ways, easements and any public areas within the development (in general manner).
- (e) Approximate boundary lines of proposed lots, with approximate areas and dimensions of each.
- (f) Names, approximate locations, and widths of adjacent streets.
- (g) Topography of the land (in a general manner).
- (h) Layout of storm drainage, water supply and sanitary sewer systems.

It is recommended that, before submitting plans for preliminary approval, the developer consult with the city engineer, the Portland Water District and the sewerage division regarding their requirements.

(3) *Tentative approval.* When a preliminary plan is submitted, the planning board shall give such preliminary plan its tentative approval, with or without modification or its disapproval within thirty (30) days from the date of submission. Such tentative approval does not constitute the approval of any definitive plan that may be developed and submitted subsequently.

(B) DEFINITIVE PLAN:

(1) *General.* Upon submission of a definitive plan of a mobile home development to the planning board for approval, the developer shall file with the planning board the following:

- (a) A transparent master copy of all sheets comprising the definitive plan, a reproducible copy and three (3) clearly legible contact prints thereof. The original drawing or master copy, whichever is submitted, will be returned after approval or disapproval. The reproducible copy and contact prints become the property of the city.
- (b) A properly executed application including a statement of the time within which the required construction of ways and the installation of municipal services will be completed. The time shall not be greater than two (2) years from the date of approval of the definitive plan unless subsequently extended by the planning board in writing.
- (c) An agreement to pay costs for advertising for public hearing for postage of mailed notices of public hearing. Check shall be payable to the treasurer of the city.
- (d) A certified check in the amount set forth in the Master Fee Schedule attached hereto as Appendix B, which amount shall be refunded after submission of a certificate from a surveyor acceptable to the planning board, certifying that boundary monuments have been accurately installed.
- (e) A certified check in the amount set forth in the Master Fee Schedule as security for the later submission to the planning board of an accurate record plan and profile (original ink drawings on linen or transparent copies on linen of drainage lines and structures, water mains and appurtenances) as actually installed with sufficient ties for proper identification. Upon acceptance by the planning board of the required plans, the amount deposited shall be refunded.

The applicant shall file by delivery or registered mail a notice with the city clerk stating the date of submission for such approval, accompanied by a copy of the completed application. The installation of utilities and the construction of the way or ways specified on the definitive plan must conform to the requirements of the city engineer, the Portland Water District and the sewerage division. Therefore, it is respectfully recommended that the developer consult with the aforementioned or any other prior to drafting the final plans for submission.

(2) *Contents.* The definitive plan shall be prepared by an engineer or land surveyor. If the definitive plan requires design of public works facilities such as streets, storm drainage system, sanitary systems, and so forth, the design and supervision of construction shall be performed by a registered professional engineer of the state. The definitive plan shall be submitted as an original, clearly and legibly drawn on black India ink upon tracing cloth or as a reproducible copy on tracing cloth. The plan shall be at a scale of one inch equals forty feet (1" = 40') or such other scale as the planning board may accept in order to show details clearly and adequately. Sheet

sizes shall preferably not exceed twenty-four inches by thirty-six inches (24" x 36"). If multiple sheets are used, they shall be accompanied by an index sheet showing the entire mobile home development. The definitive plan shall contain the following information:

- (a) Development name, boundaries, north point, date, scale, zone of development and abutting land and locus map showing assessor's map and lot number.
- (b) Name and address of record owner, developer, and engineer or surveyor.
- (c) Names of all abutters as they appear in the most recent tax list.
- (d) Lines of existing and proposed streets, ways, lots, easements (including purposes for which such are established) and public or common areas within the development. The proposed names of streets shall be shown in pencil until approved by the planning board.
- (e) Sufficient data to determine the location, direction, and length of every street and way line, lot line, and boundary line, and to establish these lines on the ground. Boundary surveys shall be tied to the Maine Coordinate System.
- (f) Location of all permanent monuments properly identified as to whether existing or proposed.
- (g) Location, names, and present widths of streets bounding, approaching or within reasonable proximity of the development.
- (h) Suitable space to record the action of the planning board and the signatures of the members of the planning board (or such persons as are officially authorized).
- (i) Existing and proposed topography at a suitable contour interval and areas with poor drainage, as required by the planning board.
- (j) Either on the same sheet as the plan of the new way or ways or on a separate sheet or sheets, the existing profile on the center line and on both exterior lines and the proposed profile on the center line of the new way at a horizontal scale of one inch equals forty feet (1" = 40') , and a vertical scale of one inch equals four feet (1" = 4'), or such other scale acceptable to the planning board. All elevations shall refer to mean sea level.
- (k) Proposed layout of storm drainage, water supply, fire hydrants and sanitary sewer systems (in accordance with specifications of the sewerage division and the Portland Water District).
- (l) Either on the same plan or a separate plan, show the outlines of mobile home stands and existing or proposed buildings as well as all existing and new trees, planting, lawn areas, and any other information necessary to indicate the extent of planting.
- (m) Benchmarks and ties to the Maine Coordinate System shall be furnished by the office of the city engineer to the developer's engineer to within one thousand (1,000) feet of the proposed development.

(3) *Performance guarantee.* Before approval of a definitive plan of development the developer shall agree to complete the required improvements specified in section 21-6. The planning board shall require that completion of such construction be secured by the following procedure:

Final approval with bonds or security. The developer shall either file a performance bond with corporate surety duly authorized to write surety bonds and regularly engaged in such business or deposit money or negotiable securities in an amount determined by the planning board to be sufficient to cover the cost of all or any part of the improvements specified in section 21-6. The amount of the bond or deposit shall be based upon cost estimates or required work approved by the city engineer. The bond or security shall not be released by the planning board until it has established that the work required has been completed in accordance with the approved plans and has been inspected and found satisfactory according to the standards hereinafter established. The amount of the security or the penal sum of any such bond may, from time to time, be reduced by the planning board, and the obligations of the parties thereto released in whole or in part by said board, provided that any reduction or release shall be commensurate with the portion of the work completed. Bond is required before any work can be started and before any lot can be leased or rented.

(4) *Review by city engineer.* Before a mobile home development may be approved by the planning board, the city engineer shall submit a report to the planning board with respect to the grades, feasibility of drainage and sewerage, and character of road surfacing.

If the city engineer questions whether any part of the land in the development can be used as a building site without endangering the health and welfare of the occupants because of conditions of flooding or inadequate sewage disposal or water supply, he shall so notify the planning board in writing. Any approval of the plan by the planning board shall then only be given on condition that the land as to which such questions exist shall not be built upon or occupied without prior consent of the city engineer; said condition shall be recorded on the plan specifying the lots or land to which it applies.

Any lot so located that it cannot be served by a connection to a public sewer system shall be provided with an approved private sewage disposal system as defined in the Maine State Plumbing Code, as amended, and in conformance with the zoning ordinance, Section VII, (C). It shall be of specification satisfactory to the planning board and to the city engineer. The board may request a report from the health department or officer and plumbing inspector, before granting approval to the plan including said lots.

Any lot so located that it cannot be served by a connection to a public water system shall be provided with a source of water satisfactory to the planning board. Before granting approval to a plan including such lots, the planning board shall establish whatever requirements are necessary in order to ensure a suitable water supply. The planning board may request a report from the health department or officer of the city in regard to the suitability of such water supply.

(5) *Public hearing.* Before approval of the definitive plan is given, a public hearing shall be held by the planning board, notice of which shall be given at the expense of the applicant at least ten (10) days prior thereto by advertisement in an official publication, or in a newspaper of general circulation in the city. Copies of said notices shall be mailed by the planning board by certified mail at the expense of the applicant to the applicant and to owners of land within five hundred (500) feet of any portion of the land included in such plan, as appearing in the most recent tax list,

(6) *Lot size and set back requirements.*

- (a) Each individual mobile home lot shall be not less than seven thousand (7,000) square feet in area, and shall be not less than seventy (70) feet wide and one hundred (100)

feet deep. Each corner shall be clearly marked with an iron, or other permanent marker.

- (b) No mobile home shall be located less than twenty (20) feet from the side and rear lines of an individual mobile home lot, and there shall be a minimum side and end clearance of forty (40) feet between adjacent mobile homes.
- (c) No mobile home shall be located closer than twenty (20) feet to a street or service building within the park.
- (d) All mobile homes shall be located at least one hundred (100) feet from all mobile home park boundary lines.

(7) *Certificate of approval.* The action of the planning board in respect to the definitive plan shall be by vote, copies of which shall be certified and filed with the city clerk and sent by delivery or registered mail to the applicant. If the planning board modifies or disapproves such plan, it shall state in its vote the reasons for its actions. Approval, if granted, shall be endorsed on the definitive plan finally accepted by the signatures of a majority of the planning board or by the signatures of the persons officially authorized by the planning board.

The failure of the planning board to issue a written notice of its decision directed to the applicant, within sixty (60) days after the definitive plan has been submitted constitutes its disapproval. An appeal may be taken from the decision of the planning board to the superior court as provided in Title 30 of the Maine Revised Statutes. The approval of a development shall be based on its compliance with municipal ordinances, including the provisions herein, and its general reasonableness. Final approval of the definitive plan does not constitute the laying out or acceptance by the city of streets within the mobile home park.

(8) *Record plan of utilities.* An accurate record plan and profile shall be submitted to the planning board after completion of the construction, showing drainage lines and structures, water mains and appurtenances, as actually installed with sufficient ties for proper identification, within one year after completion. (Ord. of 10-6-70, § 4)

Sec. 21-5. Design standards.

(A) STREETS:

(1) Location and alignment.

- (a) All streets in the mobile home development shall be designed so that they will provide safe vehicular travel and convenient access from abutting public streets or roads to each mobile home lot. Due consideration shall also be given by the developer to the attractiveness of the street layout in order to obtain the maximum livability and amenity of the development.
- (b) The proposed mobile home park streets shall conform in so far as is practicable to the master or study plan as adopted in whole or in part by the planning board.
- (c) Provisions satisfactory to the planning board shall be made for the proper projection of mobile home park streets, or for access to adjoining property which is not yet subdivided or developed.
- (d) Reserve strips prohibiting access to new ways established under this chapter from adjoining property in the same or different ownership shall not be permitted, except where such strips shall be determined to be in the public interest.

- (e) Street jogs at intersections with center line offsets of less than one hundred and twenty-five (125) feet shall be avoided.
- (f) The minimum center line radius of curved streets shall be one hundred and twenty-five (125) feet. Greater radii may be required for principal streets.
- (g) Streets shall be laid out so as to intersect as nearly as possible at right angles. No street shall intersect any other street at less than sixty (60) degrees.
- (h) Mobile home park lot lines at street intersections shall be rounded or cut back to provide for a lot line radius of not less than twenty (20) feet. Greater radii may be required by the planning board where deemed necessary for present and future vehicular travel.

(2) *Width.* The minimum width of rights-of-way of streets shall be fifty (50) feet.

(3) *Street cross section.* All streets shall have the following:

- (a) Two (2) ten (10) foot lanes for travel.
- (b) Two (2) eight (8) foot lanes for parking; one such lane may be omitted on one side of the new way in instances in which the planning board determines that the probable volume of traffic is sufficiently low as to make it reasonable to restrict parking to one side of the street only.

(4) *Grade.* Grades of streets shall not be less than five-tenths per cent (0.5%) nor more than six per cent (6%) except where the planning board determines a greater grade is required due to unusual topographic conditions in which case grades up to twelve per cent (12%) may be permitted.

(5) *Dead-end streets.* The use of dead-end streets in any development shall be kept to an absolute minimum and they shall conform to the following provisions:

- (a) The maximum length shall be one thousand (1,000) feet.
- (b) Dead-end streets shall be provided at the closed end with a turn-around having an outside diameter of not less than one hundred (100) feet. The width of the paved roadway may be reduced within the turn-around to twenty-two (22) feet. Other provisions for turning around may be used with the approval of the planning board.

(6) *Street names.* Street names shall be subject to the approval of the planning board.

(B) EASEMENTS:

(1) Easements for utilities across lots or centered on rear or side lot lines shall be provided where necessary and shall be at least twenty (20) feet wide.

(2) Where a development is traversed by a watercourse, drainage way, channel or stream, the planning board may require that there be provided a storm water easement or drainage right-of-way of adequate width to conform substantially to the lines of such a watercourse, drainage way, channel or stream.

(C) OPEN SPACE:

Before approval of a plan, the planning board shall require a developer to establish a park or recreation area suitably located so as to serve the development. The area of such park and recreation facilities shall be reasonably related to the land being developed, the proposed use of

such land, and the intensity of such use. Not less than eight per cent (8%) of the gross mobile home park area shall be devoted to park and recreational use. Recreational facilities shall include playgrounds and may include swimming pools and community buildings. Drinking fountains shall be provided in or near park or play areas.

(D) PROTECTION OF NATURAL RESOURCES:

Due regard shall be shown for the preservation of all natural features, such as large trees, watercourses, bodies of water, scenic points, historic spots, unusual topographical features, and similar community assets, which, if preserved, will add attractiveness and value to the mobile home park development.

(E) OFF-STREET PARKING:

Off-street parking in all mobile home parks shall be furnished at the rate of at least 1.5 car spaces for each mobile home. Parking spaces shall be paved and shall be located at a distance not to exceed two hundred (200) feet from the mobile home that it is intended to serve. Each space shall be at least nine (9) feet by twenty (20) feet (9' x 20') long. (Ord. of 10-6-70, § 5)

Sec. 21-6. Required improvements in an approved mobile home park.

The Maine State Highway Commission specifications, current revision, as modified by the office of the city engineer or herein, shall be used as minimum specifications. Alternates using equivalent or better specifications may be submitted to approval to the planning board.

(A) STREETS AND ROADWAYS:

(1) The area of each right-of-way shall be first cleared of all stumps, roots, brush and perishable materials, except trees, shrubs and so forth intended for preservation.

(2) All loam, loamy material, and clay shall be removed from the full length and width of the street, inclusive of sidewalks, to such depths as may reasonably be required by the city engineer.

(3) All streets shall be brought to a finished grade as shown on the profiles of the definitive plan with gravel as specified below to a width of thirty-six (36) feet, or to such width as is approved by the planning board. Crown shall be a minimum of one-fourth ($\frac{1}{4}$) inch per foot.

(4) The entire area of the roadway shall be graded to a sub grade of not less than twelve (12) inches below the finished grade as shown on the plan, profile, and cross section hereinbefore mentioned.

Any fill in sub grade shall be of a subsoil of good bearing characteristics, free from loam, vegetation, decayed matter, peat or other comprehensive material. Large rocks and boulders shall not be used where the diameter of the boulder is greater than one-half ($\frac{1}{2}$) of the depth of the fill nor shall boulders be used near the surface of the sub grade. Fill in sub grade be placed in layer of twelve (12) inches thickness wherever practicable; each layer shall be well compacted.

(5) The base course shall be a minimum of twelve (12). inches compacted in thickness of gravel borrow consisting of hard, durable stone and course and practically free from loam and clay uniformly graded and containing no stone having any dimension greater than two and one-half ($2\frac{1}{2}$) inches. Grading of gravel shall conform to the requirements of the city engineer.

(6) The pavement surface shall consist of a minimum of two (2) inches of hot bituminous pavement, grading "C" per State of Maine Specifications. No bituminous [paving] shall be done during rainy weather or when weather conditions as to temperature or otherwise are, in the

opinion of the city engineer, unfavorable for obtaining satisfactory results. The wearing surface shall be allowed to seal for twenty-four (24) hours without traffic.

(7) Adequate disposal of surface water shall be provided. Catch basins shall be built in conformity with specifications of the city engineer. Drain lines shall be installed to conduct surface water to stream courses or other drainage outlets permanently secured by proper legal documents.

(B) SIDEWALKS:

(1) Sidewalks may be required on both sides of each new way except where in the judgment of the planning board, the projected use does not require sidewalks on more than one side. Sidewalks within the mobile home park shall be of not less than three (3) feet in width. In general, the finished grade shall be at least six (6) inches above the adjacent roadway. The entire area of the sidewalk shall be graded to a sub grade of not less than ten (10) inches below the finished grade and shall be graded with at least eight (8) inches of gravel thoroughly compacted. Wearing surface shall be of suitable material approved by the city engineer and the public works department.

(2) Paved walkways not less than two (2) feet in width shall connect each mobile home stand to a paved sidewalk, to a paved parking area, to a paved street, or to a paved driveway connecting to a paved street. Walkways may be of paving stone, brick pavers, or concrete block to facilitate relocation.

(C) CURBING:

(1) Curbing shall be required on both sides of all streets. Bituminous concrete, granite or 2,500 p.s.i. concrete curb shall be provided. Granite or concrete may be required where, in the judgment of the planning board and city engineer, such curbs are necessary to prevent damage to curbing or to control erosion. Curbing shall conform to the specifications of the public works department. Paving and base construction shall be extended the full width under bituminous concrete curbing.

(2) Concrete curbing may be either precast or poured in place, with expansion joints at least every twenty (20) feet. Granite and concrete curb shall have cross sections conforming to the specifications of the public works department and shall be set on at least eight (8) inches of compacted bank gravel. Air entrainment shall be used for concrete. Sloped granite curbing may be used with cross section of approximately four inches by twelve inches (4" x 12").

(D) PLANTING SPACES:

Planting spaces or esplanades of at least three (3) feet in width may be provided on both sides of the roadway except where in the judgment of the planning board projected use does not require such planting spaces. They shall be graded with at least eight (8) inches of compacted loam. Seeding with lawn grass shall be done after building construction has been completed on the particular lots adjacent.

(E) UTILITIES:

(1) *Water supply.*

- (a) Where public water service is available, water pipes and related equipment, such as hydrants, and main shut-off valves, shall be constructed to serve all lots on each street in the mobile home park in conformity to specifications of the Portland Water

- District, and the city. A water main of at least eight (8) inches in diameter shall be installed in the street.
- (b) A water main of less than eight (8) inches in diameter may be approved as provided in the ordinance entitled "Laying Out and Acceptance of Streets and Ways as Public Streets." Water service lines shall be extended from the main to each property line before the street is surfaced. Shut-off valves to each lot shall be located in the planting spaces within the right-of-way. All utility trenches shall be filled with bank gravel, carefully compacted. Such pipes and related equipment shall either be installed by the Portland Water District or be of specifications approved by said district.
 - (c) When a public water supply is not available, a private supply may be developed and used subject to approval by the city health officer and the state department of health and welfare,
 - (d) The water supply shall be capable of delivering a minimum of 150 gallons per day per mobile home.
 - (e) Every well or suction line of the water supply system shall be located and constructed in such a manner that neither underground nor surface contamination will reach the water supply from any source.
 - (f) The water supply system shall be connected to all mobile homes, buildings, and other facilities requiring water in such a manner as to prevent freezing of the pipes. The mobile home connection shall consist of a riser terminating at least four (4) inches above the ground surface, with two (2) three-quarter (3/4) inch valve outlets. The outlets shall be threaded so that a connection can be made from one outlet to the mobile home water piping system and the other connection can serve a garden hose.
 - (g) All water piping, fixtures and other equipment shall be constructed and maintained in accordance with all applicable state and local regulations and shall be of a type and in locations approved by the building inspector.
- (2) *Sewage.*
- (a) Where public mains are available, sanitary sewer lines and related equipment, such as manholes and connecting Y's shall be constructed to serve all lots on each street in the development in conformity to specifications of sewerage division of the city. Sewer lines shall be extended from the main to each lot line before the street is surfaced. Such sewer lines and related equipment shall either be installed by the sewerage division of the city or to specifications approved by said division.
 - (b) A mobile [home] park, any part of which is further than five hundred (500) feet from an existing public sewer with available capacity and which does not connect with the public sewer must be provided with an approved private sewage disposal system as defined in the Maine State Plumbing Code, as amended, and in conformance with the zoning ordinance, Section VII(C). It shall be of specifications satisfactory to the planning board and to the city engineer.
 - (c) Each mobile home lot shall be equipped with at least a three (3) inch sewer connection located so as to provide a suitable connection from the home with a

continuous grade which is not subject to surface drainage. Provisions shall be made to plug the connection when a mobile home does not occupy the space.

(3) *Electrical and communication distribution system.*

- (a) Every mobile home park shall contain an electrical wiring system consisting of wiring, fixtures, equipment and appurtenances which shall be installed and maintained in accordance with all applicable state and local codes and regulations governing such systems. All facilities shall be approved by the electrical inspector.
- (b) Wherever soil conditions permit, all electrical and communication distribution facilities may be located underground.
- (c) Adequate lights shall be provided to illuminate streets, driveways, and walkways for the safe movement of vehicles and pedestrians at night.

(F) REFUSE AND GARBAGE DISPOSAL :

(1) The storage, collection, and disposal of refuse and garbage in the mobile home park shall be so conducted as to create no health hazards, rodent harborage, insect breeding areas, accident or fire hazards, or air pollution.

(2) All refuse shall be stored in fly tight, watertight, rodentproof containers, which shall be located not more than 150 feet from any mobile home lot. Containers shall be provided in sufficient number and capacity to properly store all refuse and garbage in separate containers.

(3) Refuse and garbage collection stands shall be provided for all containers. Such stands shall be so designed as to prevent containers from being tipped.

(4) Where municipal collection service is not available, the mobile home park licensee shall be responsible for the collection of all refuse and garbage at least once a week, which shall be transported in covered vehicles or covered containers to municipal refuse or garbage disposal areas.

(G) FUEL SUPPLY AND STORAGE:

(1) Natural gas and liquefied petroleum gas systems shall comply with all applicable codes and regulations. Installation of systems shall be subject to inspection and approval by the fire chief.

(2) All fuel oil supply systems shall be constructed and installed in each mobile home lot in accordance with all applicable codes and regulations. Installation of the system shall be subject to inspection and approval of the fire chief.

(H) STORAGE FACILITIES:

(1) Storage facilities on or conveniently near each mobile home lot shall be provided for the storage of often-used outdoor equipment, furniture and tools ; and for the storage of such other material as is used only seasonably or infrequently by the typical tenant and cannot be conveniently stored in the typical mobile home.

(2) When storage facilities are required by a mobile home tenant, the mobile home management shall furnish storage space located not more than one hundred (100) feet from the tenant's stand. Storage space shall be a minimum of ninety (90) cubic feet for each tenant in a suitable weather resistant structure built in accordance with the provisions of the West-brook's Building Code and acceptable to the building inspector.

(I) MONUMENTS:

Granite or reinforced concrete monuments in accordance with the specifications of the ordinance entitled "Laying Out and Acceptance of Streets and Ways as Public Streets" shall be installed at least on one side of the right-of-way, at all street intersections, at all points of change in direction or curvature of streets, and at other points where, in the judgment of the planning board, permanent monuments are necessary. Such monuments shall be set to conform to the specifications of the public works department. No permanent monuments shall be installed until all construction which would destroy or disturb the monument is completed.

(J) TREES:

Every effort shall be made to preserve the existing trees in the right-of-way and on the mobile home lots. Filling shall be done in such manner as to preserve the trees wherever possible.

(K) CLEANING-UP:

Upon completion of all work on the ground, the developer shall remove from the streets and adjoining property all temporary structures and all surplus material and rubbish which may have accumulated during construction, and shall leave the area in a neat and orderly condition. (Ord. of 10-6-70, § 6)

Sec. 21-7. Miscellaneous requirements.

(A) RESPONSIBILITIES OF PARK MANAGEMENT:

(1) The person to whom a permit to operate a mobile home park is issued shall operate the park in compliance with this chapter, and shall provide adequate supervision to maintain the park; its facilities and equipment in good repair and in clean and sanitary condition.

(2) The park management shall notify park occupants of all applicable provisions of this chapter and inform them of their duties and responsibilities thereunder.

(3) A mobile home shall not be occupied for dwelling purposes unless it is properly placed on a mobile home stand and connected to water, sewerage, and electrical utilities. The park management shall be responsible for the proper placement of each mobile home on a mobile home stand and for the proper installation of all utility connections. The management shall also be responsible for the disconnection of all utilities prior to the departure of a mobile home.

(4) The park management shall maintain a register containing the names of all park occupants. Such register shall be available to any civil authority inspecting the park.

(5) The license certificate shall be conspicuously posted in the office of or on the premises of the mobile home park at all times.

(6) The park management shall be responsible for notifying the assessor of the arrival or impending departure of any occupied mobile home or change of ownership that occurs within the park.

(7) No park shall permit the entrance of a mobile home having an evaporating type of heating or cooking facility.

(8) The park management shall be responsible for maintaining the streets, sidewalks, and parking areas in good condition, and shall be responsible for prompt snow and ice removal from

the streets and parking areas. Streets must be adequately plowed to permit free and ready vehicular access to all occupied lots.

(9) Mobile home stands shall be well drained and shall provide an adequate foundation for the placement of a mobile home. Stand foundations shall be of such construction as to prevent heaving, shifting, erosion or settling and shall be free of all combustible material.

(10) The park management shall furnish and maintain storage facilities for each tenant designed in a manner to enhance the appearance of the development.

(11) The park management shall furnish and keep all playground equipment in a well maintained and safe condition.

(B) RESPONSIBILITIES OF PARK OCCUPANTS:

(1) The park occupant shall comply with all applicable requirements of this section, and shall maintain his mobile home lot, its facilities and equipment in good repair and in a clean and sanitary condition.

(2) All individual mobile homes shall be equipped with noncombustible skirting, and shall set on noncombustible blocking, piers, or supports.

(3) No owner or person in charge of a dog, cat or other pet animal shall permit it to run at large or to commit any nuisance in the park.

(4) Park occupants shall be responsible for keeping their respective premises in neat and orderly condition ; they shall not permit trash, litter, garbage, or other refuse to accumulate and become a nuisance. (Ord. of 10-6-70, § 7)

Sec. 21-8. Special provisions.

(A) STANDARDS:

Notwithstanding other provisions of this chapter relating to space, bulk, and use, the planning board in reviewing plans for proposed mobile home parks, may modify said provisions related to space, bulk, and use to permit innovative approaches to environmental design in accordance with the following standards:

- (1) The purpose and intent of this chapter shall be upheld.
- (2) There shall be compliance with all state and local codes and ordinances.
- (3) There shall be no approval of any proposed new or expanded mobile home park which exceeds the net residential density set forth in this chapter. For the purposes of this chapter net residential density shall be established by the area of residual space available for mobile home development after deduction of vehicular rights-of-way and land not developable because of drainage, subsurface conditions or other natural impediment.
- (4) Front yard set back requirements may not be modified by a reduction of more than fifty per cent (50%).
- (5) Minimum side yard requirements may not be modified by a reduction of more than fifty per cent (50%).
- (6) Frontage requirements shall not be modified by a reduction of more than thirty-five per cent (35%).

- (7) Each building and mobile home stand shall be an element of an overall plan for site development.
- (8) Where possible, mobile home stands shall be oriented with respect to scenic vistas, natural landscape features, topography, and natural drainage areas.
- (9) Development proposals shall include a landscape program to illustrate the proposed treatment of space, roads, paths, service and parking areas. Screening devices shall not impair pedestrian and vehicular safety.
- (10) All utilities shall be installed underground wherever possible. All transformer boxes, substations, pumping stations, and meters shall be located and designed as not to be unsightly or hazardous to the public.
- (11) Residual open space accumulated by modifying space and bulk requirements within the allowable density limits shall be allocated to the recreational amenity and environmental enhancement of the mobile home park and shall be designated as such on the site plan for the proposed development.
- (12) After approval of a proposed mobile home park there shall be no further subdivision of land within the proposed development which will increase the allowable net density. (Ord. of 10-6-70, § 8)

Sec. 21-9. Administration.

(A) VARIATION:

(1) Strict compliance with the requirements of these rules and regulations may be waived when, in the judgment of the planning board, such action is in the public interest and not inconsistent with the intent of this chapter.

(B) CHANGES AND ALTERATIONS:

(1) No changes or alterations shall be made in an approved definitive plan without submitting the changes for approval to the planning board. Any alteration in grades, drainage plans, or other utilities shall be deemed to constitute a change in the definitive plan.

(C) ENFORCEMENT:

It shall be the duty of the building inspector to enforce the provisions of this chapter.

(1) If the building inspector shall find any of the provisions of this chapter are being violated, he shall notify in writing the person responsible for the violations indicating the nature of the violation and ordering the action necessary to correct it. He shall take any other action authorized or required by this chapter to insure compliance with, or to prevent violation of, its provisions.

(D) LEGAL ACTION AND VIOLATION:

(1) When any violation of any provision of this chapter shall be found to exist, the city solicitor, either on his own initiative or upon notice from the building inspector, is hereby authorized and directed to institute any and all actions and proceedings either legal or equitable that may be appropriate or necessary for the enforcement of the provisions of this chapter, the same to be brought in the name of the city.

(2) The building inspector may revoke any license to maintain and operate a mobile home park when the licensee has been found violating any provisions of this chapter and such violation has continued for a period of thirty (30) days after written notice thereof from a municipal

inspecting officer. The license may be reissued when the circumstances leading to the revocation have been remedied and the park is being maintained and operated in full compliance with the provisions of this chapter.

(E) APPEAL PROCEDURE:

(1) An appeal may be taken from any order issued by the building inspector, or other municipal inspecting officer, and from the refusal to grant a permit, to the municipal officers.

(2) On an appeal in writing to the municipal officers, they shall at their next meeting affirm, modify or set aside the prior order according to the terms of this chapter. However, they may permit a variation from the terms of the chapter where necessary to avoid undue hardship, provided that there is no substantial departure from the intent of this chapter.

(3) An appeal from the decision of the municipal officers may be taken to the Cumberland County Superior Court in accordance with the provisions of Title 30, Section 2151 (c) of the Maine Revised Statutes.

(F) PENALTY FOR VIOLATION:

(1) Any person or party found guilty of violating any of the provisions of this chapter shall be subject to the fine set forth in the Master Fine Schedule attached hereto as Appendix C, for each offense and each day in which a violation continues to exist shall constitute a separate offense. (Ord. of 10-6-70, § 9)

Secs. 21-10 – 21-14. Reserved.

ARTICLE II. MOBILE HOME PARK RENT JUSTIFICATION

Sec. 21-15. Declaration of an Emergency.

Whereas a serious shortage of affordable mobile home park space in the city has resulted in abnormally high lot rents, and has produced serious threats to the public health, safety, and general welfare of the citizens of the community, this ordinance hereby mandates the establishment of a Mobile Home Lot Rent Justification Board. (Ord. of 9-24-90)

Sec. 21-16. Definitions.

- (1) The term *gross income* means the sum of total rent received plus other money generated as a result of the operation of the park, including, but not limited to fees for services plus any bonuses, benefits or payments received in connection with the use or occupancy of the mobile home unit.
- (2) The term *lot rental amount* means all financial obligations, except user fees, which are required as a condition of tenancy.
- (3) The term *mobile home* means a residential structure, transportable in one or more sections, which is eight (8) body or more in width, over thirty-five (35) body feet in length with a hitch, built on an integral chassis, designed to be used as a dwelling when connected to required utilities, not originally sold as a recreation vehicle, and included plumbing, heating air conditioning, and electrical systems contained therein.
- (4) The term *mobile home lot rental agreement* or *rental agreement* means the written agreement between a mobile home owner and a mobile home park owner in which the mobile home owner is entitled to place his mobile home on a mobile home lot for either direct or indirect remuneration of the mobile home park owner.

- (5) The term *mobile home owner* or *home owner* means a person who owns a mobile home and rents or leases a lot within a mobile home park for residential use.
- (6) The term *mobile home park owner* or *park owner* means an owner or operator of a mobile home park.
- (7) The term *net operating income* means the gross income of the mobile home park less the operating expenses of the park.
- (8) The term *operating expenses* means annual expenses reasonably incurred by the mobile home park owner directly related to the operating of the park for the following items:
 - (a) Real estate and personal property taxes;
 - (b) Utility costs defined as electricity, sewer and water, heating oil and rubbish removal;
 - (c) Normal repair and maintenance expenses for the grounds and common facilities including but not limited to landscaping, cleaning, plowing, painting and equipment repair;
 - (d) Operating supplies incurred for administrative and maintenance purposes;
 - (e) Administrative expenses including, but not limited to the payroll expenses, and utilities, reasonable and necessary advertisement costs incurred to ensure occupancy, and legal and accounting expenses related to the operating of the mobile home park;
 - (f) Insurance premiums prorated over the life of the policy;
 - (g) Other taxes, fees and permits (excluding income taxes);
 - (h) The cost of all fees which are required to be paid to the city under this ordinance or rules and regulations promulgated pursuant to § 21-19(b) for review of an application which results in the approval of a rental increase or a requested change in park rules; provided that no such costs shall be included in the park's annual operating expenses if the park owner has failed or refused to meet, and to engage in good faith discussions with the tenants association as provided in § 21-18(c) of this ordinance;
 - (i) Capital improvements amortized in accordance with an amortization schedule approved by or acceptable under general accounting principles and certified by the park owners auditors as reflecting the normal useful life expectancy of that type of capital improvement. In addition, money placed in reserves for long term capital improvements may be treated as operating expense up to five percent (5%) of the annual gross income of the park, provided that the accumulated reserves shall not exceed thirty percent (30%) of the annual gross income of the park and provided that capital improvements funded from the reserve account shall not also be allowable on the capital improvement amortization schedule;
 - (j) Interest expenses for debt resulting from original acquisition of the park and for subsequent capital improvements to the park. Late penalties and/or other interest assessed as a result of late payment or other default by owner shall not be included as an operating for purposes of this ordinance;
 - (k) Depreciation expenses shall not be treated as operating expenses for the purpose of this ordinance;

- (1) Points and fees incurred by the park owner in refinancing the debt resulting from original acquisition of the park and in financing any subsequent capital improvements, said points and fees to be capitalized and amortized over the term of the loan.
- (9) The term *unreasonable* means arbitrary, capricious, or inconsistent with this ordinance.
- (10) The term *user fees* means those amounts charged in addition to the lot rental amount for nonessential optional services provided by or through the park owner to the mobile home owner.
- (11) The term *discrimination* or *discriminatory* means that a home owner is being treated differently as to the rent charged, the services rendered, or an action for possession, or other civil action being taken by the park owner without reasonable basis for the difference in treatment. (Ord. of 9-24-90; Ord. of 4-21-92)

Sec. 21-17. Mobile home lot rental agreements.

(1) The mobile home park owner shall provide each mobile home owner with a written mobile home lot rental agreement which shall state the lot rental amount, the amount of any user fees, the term of the agreement and shall have attached a copy of this ordinance.

(2) No lot rental agreement shall contain any rule or regulation prohibited by this ordinance, nor shall it provide for promulgation of any rule or regulation inconsistent with this ordinance.

(3) The home owner shall have no financial obligation to the park owner as a condition of tenancy, except lot rental amount. The parties may agree otherwise to user fees which the home owner chooses to incur. No user fees shall be charged by the park owner to the mobile home owner for any services or amenities which were previously provided by the park owner to the mobile home owner for any services or amenities which were previously provided by the park owner and included in the lot rental amount unless there is a corresponding decrease in the lot rental amount.

(4) No lot rental agreement shall be offered by a park owner for a term less than one (1) year, however, the initial term may be less than one (1) year in order to permit the park owner to have all rental agreements within the park commence at the same time. (Hereafter, all terms shall be for a minimum of one year.) The intention of the park owner to raise the lot rent within the first year shall be fully disclosed.

(5) The lot rental agreement shall contain the lot rental amount and a schedule of the services included. An increase in lot rental amount shall not be arbitrary or discriminatory between similarly situated tenants in the park. (Ord. of 9-24-90)

Sec. 21-18. Lot rental increases; reduction in services or utilities; change in rules and regulations; mediation or arbitration.

(1) A park owner shall give written notice to each affected mobile home owner and the board of directors of the home owner's association, if one has been formed, at least 90 days prior to any increase in lot rental amount or reduction in services or utilities provided by the park owner or change in rules and regulations. The notice shall identify all other affected home owners by lot number. The home owner's association shall have no standing to challenge the increase in lot rental amount, reduction in services or utilities, or change of rules and regulations unless a majority of the affected home owners agree to such representation.

(2) Notice as required by this section shall only be required in the case of any change in the lot rental amount, any user fee charges, a reduction in services or utilities, or a change in park rules and regulations and the effective date thereof.

(3) A committee, not to exceed five in number, designated by a majority of the affected mobile home owners or by the board directors of the home owners association, if applicable, shall meet at a mutually convenient time with the park owner within thirty (30) days of the notice to discuss the reasons for the change in lot rental amount, user fees, reduction in services or utilities, or change in rules and regulations.

(4) Within thirty (30) days of the date of the scheduled meeting described in subsection (3), the home owners may request that the dispute be submitted to the rent justification board, if a majority of the affected homeowners have designated, in writing that:

- (a) The rental increase is unreasonable;
- (b) The rental increase has made the lot rental amount unreasonable;
- (c) The decrease in services or utilities is not accompanied by a corresponding decrease in rent or is otherwise unreasonable; or
- (d) The change in the rules and regulations is unreasonable.

(Ord. of 9-24-90)

Sec. 21-19. Dispute settlement.

(1) There shall be a rent justification board consisting of five (5) residents of the city. The mayor shall appoint, with approval of the city council, one member from each of the city's wards. All members shall hold office for a term of three (3) years, except that initial appointments shall be staggered so that no more than two terms expire annually.

(2) The board shall make such studies and investigations, conduct such hearings and obtain such information as is deemed necessary in promulgating regulations, rules or orders under this ordinance and administering and enforcing regulations and orders promulgated hereunder. Any such rules and regulations adopted by the board shall be subject to the approval of the city council. Mobile home park owners may be required to furnish any relevant information reasonably required by the board and to produce records and other documents and make reports. Such persons have the right to be represented by counsel. All parties shall have the right to present relevant testimony or documentary evidence and shall be allowed to cross-examine opposing parties' witnesses.

(3) The board after a public hearing shall make such individual or general adjustments, either upward or downward, in the lot rental amount as may be necessary to assure that rents are established at levels which yield to mobile home park owners a fair net operating income from the mobile home park.

(4) The following factors, among other relevant factors, which the board by regulation may define, shall be considered in determining whether the mobile home park will yield a fair net operating income.

- (a) Increases or decreases in property taxes;
- (b) Unavoidable increases or any decreases in operating and maintenance expenses;

(c) Capital improvements of the mobile home park and costs of repair, replacement and maintenance;

(d) Increases or decreases in services or equipment.

(Ord. of 9-24-90; 4-21-92)

Sec. 21-20. Judicial review.

Any person who is aggrieved by any action, regulation or order of the board may file a complaint against the board in the district court having jurisdiction over the area in which the property is located and thereupon an order or notice shall be issued by such court and served on the board as provided in the case of a civil action. Such district court shall have exclusive original jurisdiction over such proceedings. All orders, judgments, and decrees of such district court may be appealed as is provided in the cases of a civil action in such district court. (9-24-90)

Chapter 22
OFFENSES—MISCELLANEOUS

- Article I.** [In General](#), §§ 22-1 – 22-19
- Article II.** [Anti-Graffiti Ordinance](#), §§ 22-20 – 22-30
- Article III.** [Curfew Ordinance](#), §§ 22-31 – 22-45
- Article IV.** [Nudity Ordinance](#), §§ 22-46 – 22-55

ARTICLE I. IN GENERAL

Sec. 22-1. Curfew established; enforcement.

Repealed. (1942 Rev. Code, Ch. XXXVI, §§ 1, 2; Ord. of 6-22-09)

Sec. 22-2. Loitering; police order to disperse.

(a) It shall be unlawful for any person to loiter in any public place, or in or about any building or dwelling or adjacent thereto, in such a manner so as to:

- (1) Obstruct any public street or public place by hindering or impeding or tending to hinder or impede the free and uninterrupted passage of pedestrians or vehicles.
- (2) Commit in or upon any public street or public place any act which is an obstruction or interference to the free and uninterrupted use of any property, or with any business being lawfully conducted by anyone in any public place, or which prevents the free and uninterrupted ingress and egress therein, thereon and thereto.
- (3) Create or cause to be created any disturbance or annoyance to the discomfort or alarm of any person lawfully in or going to or from any building, dwelling or public place.

(b) No person shall stop, loiter, be or remain upon, any school grounds, the grounds of any municipal building, any municipal building, any municipal cemetery or park, field or woodlands, or any municipal recreation facility or playfield, between the hours of 10 p.m., on any day, and 5:00 a.m. of the following day, except to attend a municipally-sponsored event taking place at such locations during that time period; except while engaged in employment with the city; or except when other hours of operation, either earlier or later, are posted at such public grounds, in which case, such restrictions shall be controlling and shall be of full force and effect as though incorporated herein.

(c) "Loitering" shall mean remaining in essentially one location either alone and/or in consort with others and shall include the colloquial expression "hanging around."

(d) "Public place" shall mean any place to which the general public has access and a right to resort for business, entertainment or other lawful purposes, and shall include the front or immediate area of any store, shop, restaurant, tavern, or other place of business and also public grounds, areas or parks.

(e) When any person or persons causes or commits any of the conditions enumerated in subsections (a) or (b) herein, a police officer, or any law enforcement officer, shall order the person or persons to stop causing or committing such conditions, and may, if he deems necessary for the preservation of public peace and safety, order that person or persons to move on or

disperse. Any person who fails or refuses to obey any such order shall be guilty of a violation of this section.

(f) This section shall not apply to peaceful picketing, public speaking or other lawful expressions of opinion not in contravention of other city ordinances, or state and federal laws. (1942 Rev. Code, Ch. XXXVI-A, §§ 1, 2; Ord. of 9-11-61; Ord. of 4-2-73; Ord. of 7-7-97)

Sec. 22-3. Pedestrians not to obstruct traffic; duty of officer, etc., to disperse offenders.

Three (3) or more persons shall not stand together, or near each other, in any street or on any sidewalk, in such a manner as to obstruct the free passage therein for passengers. It shall be the duty of any police officer, constable or watchman of the city to order any person violating the foregoing provision of this section to move on; and if the person does not obey, to remove him or arrest and cause him to be brought before the district court. There a complaint shall be made against him for the violation of this section. (1942 Rev. Code, Ch. XVI, § 7)

Sec. 22-4. Games of chance in streets.

No person shall expose in any street, square or other public place any table or device of any kind whatsoever upon or by which any game of hazard or chance can be played, and no person shall play at any such table or device or at any unlawful game on any street or public place. (1942 Rev. Code, Ch. XVI, § 4)

Sec. 22-5. Games in streets not to interfere with traffic.

No person shall play at any game of ball, football, snowball or any other game interfering with the convenience or safety of passersby, in or upon any street in the city. (1942 Rev. Code, Ch. XVI, § 6)

Sec. 22-6. Disturbing the peace.

No person shall, in any street or public place, make any loud or unusual noise, either by voice or otherwise, or sing improper or boisterous songs, or utter obscene, indecent or profane songs or words, or in any unruly or boisterous manner disturb the quiet and good order of the city. (1942 Rev. Code, Ch. XVI, § 12)

Sec. 22-7. Distribution of advertising materials.

(a) No person shall pass, throw or deposit, or cause to be passed, thrown or deposited in any street, court, square or in any public place, any paper, handbills, pamphlets or posters.

(b) No person, without permission of the council, shall throw or deposit or cause to be thrown or deposited in any doorway or entrance to any building, or pass or cause to be passed from door to door of any building any handbills, pamphlets, posters or any other kind of advertising matter.

(c) The right given to pass and distribute handbills, pamphlets and posters as mentioned in this section may be revoked at any time by the council if it be deemed for the welfare of the public. (1942 Rev. Code, Ch. XXXI, §§ 1, 2)

Sec. 22-8. Public buildings, trees, poles not to be defaced by posting advertisements.

No person, except by permission of the city council, shall post any bill, notice or any advertisement on, or in any way deface or injure any of the public buildings, trees growing in the

streets or public places or poles supporting electric lights or wires. (1942 Rev. Code, Ch. XVI, § 14)

Sec. 22-9. Spitting in public places.

No person shall spit upon any floor of any public building or place of amusement or upon any sidewalk. (Ord. of 5-4-64, Ch. XXVII, § 11)

Sec. 22-10. Curfew on swimming in Highlands Lake Dam area.

The dam at the outlet of Highland Lake (also known as Duck Pond) and the shore for fifty (50) feet on either side of the dam shall be closed to swimming between the hours of 8:30 p.m. and 6:00 a.m. (Ord. of 8-5-74)

Sec. 22-11. Tobacco free zones.

No smoking in all Westbrook School Department buildings and grounds and certain outdoor areas owned and/or controlled by the city. Given the public health dangers inherent in smoking, including exposure to second-hand smoking, and except as may otherwise be provided by law, there shall be no smoking in the following publicly owned and/or controlled areas:

A. City owned/controlled areas: Riverbank Park, Bicentennial Park (including Ramp Park), all areas set forth in Section 23-6 of the Code of Ordinances, Saccarappa Falls Park and the Boardwalk, the skating rinks at Stroudwater Street, Bridge Street (including the ball field), and Lincoln Street, and the ball fields at Foster Street, Stevens Avenue, and Cornelia Warren Field, and the outdoor swimming pool.

B. School Committee controlled areas: All outdoor areas under the control and supervision of the School Committee including, without limitation, the areas around all buildings, parking lots and service areas, and all playing fields and recreation areas; and

C. Presumpscot Commons: All outdoor areas under the control and supervision of the Westbrook Housing Authority on Main Street and known as Presumpscot Commons.

The specific areas in which smoking is prohibited shall be conspicuously marked by signage posted by the city.

This prohibition may be enforced by any law enforcement officer by first giving the alleged violator an oral warning and then by issuance of a civil summons. Offenses shall be punishable by fines as set forth in the Master Fine Schedule attached hereto as Appendix C. In the event that a fine is not paid, it shall be collected in Maine District Court pursuant to Rule 80H of the Maine Rules of Civil Procedure. (Ord. of 8-21-06, 3-4-13)

Sec. 22-12 – 22-19. Reserved.

ARTICLE II. ANTI-GRAFFITI ORDINANCE

Sec. 22-20. Purpose.

The City Council has determined that graffiti creates a visual blight and adversely affects the enjoyment and value of property. When graffiti is allowed to remain on property and is not promptly removed, it invites additional graffiti and may encourage criminal activity or lead to nuisance conditions. This ordinance is intended to deter graffiti, to provide mechanisms for prompt removal of graffiti, and to establish penalties for graffiti.

Sec. 22-21. Definitions.

- (a) “Graffiti” means any inscription, word, figure, design, painting, writing, drawing or carving that is marked, etched, scratched, drawn, painted or otherwise applied to property without the prior authorization of the owner of the property regardless of the content or nature of the material used.
- (b) “Graffiti implement” means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable of scarring or leaving a visible mark on any natural or manmade surface.
- (c) “Graffiti removal” means the removal or attempted removal or painting over of graffiti by the owner of the affected property or by another person with the consent of the owner or owner’s designee or by court order.
- (d) “Owner” means the person listed on the Assessor’s records for the City of Westbrook as the owner of property.
- (e) “Property” means any real or personal property, including, but not limited to, any portion of any premises, structure, house, building, fence or vehicle.

Sec. 22-22. Prohibited Acts.

The following acts are prohibited:

- (a) Applying graffiti to any private or public property without the permission of the owner;
- (b) Soliciting or commanding another person to apply graffiti to any private or public property without the permission of the owner; or
- (c) Aiding or abetting, or agreeing to aid or abet, another person in planning to apply, or applying, graffiti to any private or public property without the permission of the owner.

Sec. 22-23. Prohibited Possession of Graffiti Implements.

Possession of graffiti implements in the following situations is deemed to be evidence of an intent, or attempt to commit, a prohibited act hereunder and is prohibited:

- (a) No person under the age of eighteen (18) years may possess any graffiti implement while on or within fifty feet (50’) of any school property. Notwithstanding this provision, a person under eighteen may possess a broad-tipped marker if traveling to or from a school in which such person is participating in a class or activity that requires the possession of a broad-tipped marker. The burden of proof shall be on such person to demonstrate that possession was required for a school class or activity.
- (b) By any person on or immediately adjacent to private property without the permission of the owner of the property. The term “immediately adjacent” means near enough to the property to apply graffiti.
- (c) By any person in any public facility, park, playground, swimming pool, recreational facility, or other public building, structure, premises or vehicle

without the City's permission, or within fifty feet (50') of any underpass, bridge abutment, or similar infrastructure without permission of the owner.

Sec. 22-24. Furnishing Graffiti Implements to Minors Prohibited.

No person, other than a parent or legal guardian, may sell, exchange, give, lend, or otherwise furnish, or cause or permit to be exchanged, given, loaned, or otherwise furnished, any graffiti implement to any person under the age of eighteen (18) years without the written permission of the parent(s) or guardian of the minor.

Sec. 22-25. Penalties.

- (a) Any person violating this article shall be subject to a fine of not more than two hundred fifty dollars (\$250) for the first offense, and not more than five hundred dollars (\$500) for a second or subsequent offense. Each day any violation shall continue shall constitute a separate violation.
- (b) In addition to the fine stated in (a), any person found to have committed a violation of Sec. 22-22 shall be subject to restitution for all costs of graffiti removal, and/or to perform community service for the City of Westbrook.

Sec. 22-26. Effective Date.

This article shall become effective November 3, 2008.

Sec. 22-27 – 22-30. Reserved.

ARTICLE III. CURFEW ORDINANCE

Sec. 22-31. Short Title.

This Article shall be known as the City of Westbrook Curfew Ordinance.

Sec. 22-32. Purposes and Findings.

The City of Westbrook has a compelling public safety interest in prescribing certain conduct by minors, regulating the time, place and manner of otherwise lawful conduct by minors and in encouraging parental responsibility for the conduct of minors on public streets and public property within the City of Westbrook.

The City Council finds that a curfew will help reduce or eliminate juvenile delinquency and the incidents of assaults, criminal mischief and disturbances which have been documented by the Police Department and provided to this Council.

The City Council finds that encouraging parental responsibility for the conduct of minor children increases the likelihood of responsible conduct by minors and reduces the level of juvenile crime in the City of Westbrook.

Sec. 22-33. Definitions.

For the purposes of the Curfew Ordinance these words and phrases shall be defined as follows:

- (a) "City" is the City of Westbrook in Cumberland County, Maine.
- (b) "Minor" is any person 17 or less years of age.
- (c) "Parent" is any person having legal custody of a minor (i) as a natural or adoptive parent, (ii) as a legal guardian, (iii) as a person who stands *in loco parentis* or (iv) as a person to whom legal custody has been given by order of court.
- (d) "Loiter" means to remain in one public area for no apparent purpose other than to establish physical control over such identifiable area or to conceal illegal activities.
- (e) "Street" is a way or place, open to the public as a matter of right, for purposes of vehicular travel or, in the case of a sidewalk, for pedestrian travel. The term street includes the legal right of way, including but not limited to the travel way or traffic lanes, the curb, the sidewalks, whether paved or unpaved, and any grass plots or other grounds found within the legal right of way.
- (f) "Public property" means all real property owned by, or under the control of, public authorities such as the City of Westbrook, the County of Cumberland, the State of Maine, the federal government and any quasi-municipal governmental agencies such as the Portland Water District. The definition shall include all public streets and ways, public school properties and all City parks and recreation areas.

Sec. 22-34. Curfew for Minors.

Except as otherwise provided by law, it shall be unlawful for any minor to loiter or to gather in a group of three (3) or more minors upon any street, park, school or other public property within the City of Westbrook between 10:30 p.m. and 5:00 a.m., local prevailing time. (Ord. of 6-22-09)

Sec. 22-35. Exceptions.

The curfew established under this ordinance shall not apply:

- (a) When a minor is accompanied by his or her parent;
- (b) When a minor is accompanied by an adult authorized by his or her parent to accompany him or her for time in question;
- (c) When a minor is exercising any right otherwise protected by law;
- (d) When a reasonable necessity exists;
- (e) When the minor is on the sidewalk of his or her residence;
- (f) When the minor is returning home by a direct route from a school, religious or other voluntary association activity in which he or she has just participated or attended;
- (g) When authorized by regulation issued by the Chief of Police or his designee; or
- (h) When necessary for his or her employment purposes.

Sec. 22-36. Parental Responsibility.

It shall be unlawful for a parent having legal custody of a minor to knowingly permit his or her minor child to loiter in or on any public property in violation of this ordinance.

The term "knowingly" includes actual awareness and awareness that a parent should reasonably be expected to have concerning the whereabouts of his or her minor child, then under his custody, during the curfew hours established under this ordinance.

Sec. 22-37. Police Procedures.

- (a) Any law enforcement officer in the City who finds a minor on the streets in apparent violation of this Ordinance shall take the minor to the Public Safety Building, where the minor's custodial parent shall immediately be notified to come for his or her minor child.
- (b) Notwithstanding the provisions of Sec. 22-37(a), when a law enforcement officer finds a minor in apparent violation of this ordinance, but good cause exists for returning the minor directly to his or her residence, such as finding a minor younger than 10 years of age in or on public property in the immediate vicinity of his or her residence, the law enforcement officer may deliver the minor directly to the minor's residence; however, in all circumstances the law enforcement officer shall within 24 hours file a written report on the same with the Chief of Police.
- (c) When a parent has come to the Public Safety Building to take charge of the minor, and the appropriate incident information has been recorded, the minor shall be released to the custody of such parent. If the parent cannot be located, or fails to take charge of the minor, then the minor shall be released to the juvenile authorities, except to the extent that in accordance with police regulations, approved in advance by juvenile authorities, the minor may temporarily be entrusted to a relative, neighbor or other person who will, on behalf of the parent, assume responsibility for caring for the minor until the parent is able to take custody of the minor.
- (e) In the case of a first violation by a minor, the Chief of Police shall notify the parent, by certified mail, of the violation with a warning that any subsequent violation will result in imposition of a fine, including imposition of a fine on the parent.

Sec. 22-38. Penalties.

If, after the sending of the warning notice pursuant to Section 22-27 of a first violation, a minor commits a second violation, the minor shall be fined twenty-five dollars (\$25), and for each subsequent offense, the fine shall be increased by an additional twenty-five dollars (\$25), up to a maximum of one hundred dollars (\$100) for the fourth offense, payable to the City of Westbrook.

If, after receiving the warning notice pursuant to Sec. 22-27 of a first violation, a minor commits a second offense, this shall be treated as a first offense by the parent under Sec. 22-36, and the fine shall be one hundred dollars (\$100). For each subsequent offense, the fine shall be increased by an additional twenty-five dollars (\$25).

Sec. 22-39. Construction; Continuing Evaluation.

The terms of this ordinance shall be liberally construed to promote its purposes in reducing juvenile delinquency, avoiding the dangers to minors inherent in being in or on public property after 9:00 p.m. and in promoting increased parental responsibility for the care and custody of their minor children.

The City Council shall conduct a periodic re-evaluation of this Ordinance, as needed, no less than annually.

Sec. 22-40 – 22-45. *Reserved.*

(Ord. of 12-01-08)

ARTICLE IV. NUDE ENTERTAINMENT

Sec. 22-46. Legislative findings and purpose.

WHEREAS, establishments in other communities in Maine that allow nude entertainment have been found to create or result in certain undesirable conditions; and

WHEREAS, other communities have determined that nude entertainment can induce individuals to engage in prostitution, sexual assaults, breaches of the peace and other criminal activity; and

WHEREAS, the presentation of nude entertainment in an establishment can have negative impacts upon surrounding neighborhoods and result in a tawdry atmosphere in the area; and

WHEREAS, establishments that allow or provide nude entertainment on the premises must be carefully located in a manner that minimizes their negative secondary effects on public health, safety and morals, as discussed in detail in the McCleary report for Jackson County , Missouri (dated May 9, 2008);

NOW, THEREFORE, the City Council of the City of Westbrook hereby determines that this Ordinance is necessary to address the issues set forth in this section and to lessen the negative effects that nude entertainment can have on the City.

Sec. 22-47. Definitions.

COMMERCIAL ESTABLISHMENT: Any retail establishment that offers food, beverages, merchandise, products or entertainment services for sale to members of the general public, operated as a for-profit business and treated as such for federal or state tax purposes.

NUDE ENTERTAINMENT: Any display of live persons in a state of nudity or in a visible state of sexual excitement whether or not clothed.

NUDITY: The showing of the human male or female genitals, pubic area or buttocks or the female breast below the top of the nipple or the depiction of covered male genitals in a discernibly turgid state.

PERSON: Any individual, partnership, firm, association, corporation, trustee, lessee, agent, assignee or other legal entity.

PREMISES: The entire building and parcel of land on which it is located where a use occurs, including storage and unoccupied areas, regardless of whether areas are partitioned into separate rooms or used for other purposes.

SADOMASOCHISTIC ABUSE: Flagellation or torture by or upon a person clad in undergarments or a mask or bizarre costume or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

SEXUAL CONDUCT: Acts of sodomy, masturbation, homosexuality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person is a female, breast.

SEXUAL EXCITEMENT: The condition of the human male or female genitals when in a state of sexual stimulation or arousal.

Sec. 22-48. Use Permit Required.

No person operating a commercial establishment in the City of Westbrook shall present or allow presentation of any form of nude entertainment on the premises of the establishment concerned without first obtaining a use permit for that purpose from the city's Code Enforcement Officer. The application procedure and criteria for issuance of a use permit shall be as provided in Sections 602 and 603 of the Land Use Ordinance; provided, however, that the following additional requirements shall apply to commercial establishments offering nude entertainment:

A. The application for a use permit under Sections 602 and 603 of the Land Use Ordinance shall state that the proposed use includes nude entertainment. The application shall describe the nude entertainment to be offered, including the intended frequency and times, and shall indicate the area of the premises where the nude entertainment shall take place.

B. The application shall disclose the name and current residence address of all principals of the business concerned and shall disclose the name and current residence address of all persons holding a financial interest of 5% or more in the business concerned.

C. Prior to granting a use permit, the Code Enforcement Officer shall forward the application to the Chief of Police for a criminal information background check on each of the persons named in the application under Subsection B above. The Code Enforcement Officer shall deny the application if the applicant, any principal of the business concerned or any holder of a five-percent or greater financial interest in the business concerned has a record of conviction of prostitution, promoting prostitution or of a Class A, B, or C felony under Maine law, or equivalent offenses in other jurisdictions, during the ten-year period ending immediately prior to the application date.

D. Location and standards.

(1) No use permit shall be granted for a commercial establishment offering nude entertainment unless the premises concerned are located in an industrial zoning district and the premises concerned meet all district provisions and development standards contained in the Land Use Ordinance plus the following additional requirements:

(a) No use permit shall be granted for a commercial establishment offering nude entertainment if the premises concerned are located within 500 feet of any other such establishment for which a use permit previously issued remains in force; any

establishment licensed to sell alcohol for on-premises or off-premises consumption under 28-A M.R.S.A. § 601 et seq.; a church, chapel, parish house or other place of worship; or a public library, juvenile shelter or orphanage in existence as of the application date, as measured from the main entrance of the premises to the main entrance of a building by the ordinary course of travel.

(b) The premises concerned must not be located within 500 feet of the nearest residentially improved and used property located within a residential zoning district established under the provisions of the Land Use Ordinance, as measured in a straight line from the premises to such property.

(c) The premises concerned must not be located within 500 feet of the nearest property line of any public or private school, school dormitory, or school ground, public playground or public park, as measured in a straight line from the premises to the property line.

(2) For the purposes of this Subsection D, the term "industrial zoning district" means the Industrial Park Zoning District bisected by Warren Avenue, as designated in the Land Use Ordinance and Zoning Map.

E. No use permit shall be issued for a commercial establishment offering nude entertainment unless the premises concerned include changing rooms and toilet facilities for performers that are separated from any area of the premises to which the public will have access.

F. No use permit shall be issued for a commercial establishment offering nude entertainment if any portion of the premises concerned consists of residential apartments or other dwelling units, whether or not occupied.

G. The premises concerned, in addition, shall meet all applicable local code requirements.

H. The subsequent establishment of an establishment licensed to sell alcohol, a public or private school or school dormitory, a church, chapel, parish house or other place of worship, a public library, a juvenile shelter or orphanage, a playground or public park or the rezoning of any nonresidential district within 500 feet of a residential district (with the exception of the zoning district in which the adult business is situated) shall not affect the validity of a use permit of a legally existing commercial establishment offering nude entertainment. In the event of the subsequent establishment of any of the foregoing uses, the commercial establishment offering nude entertainment shall be treated as any other use permitted in the zoning district.

I. Notwithstanding any other ordinance provision to the contrary, the CEO must decide any application hereunder within 30 days of its receipt, the applicant must appeal to the Zoning Board of Appeals within 30 days thereafter, the Zoning Board of Appeals must hear the case within 30 days of any such appeal, and then must decide the appeal within 30 days of the conclusion of the appeal hearing.

Sec. 22-49. Conduct.

A. No person under the age of 18 years shall be employed in any capacity upon the premises of a commercial establishment that offers nude entertainment. The operator of each such establishment shall be responsible for verifying the age of each employee through photographic identification, including hourly employees, salaried employees and all persons working on the premises for tips, commissions or as independent contractors, contract dancers or contract performers.

(1) Each employer shall maintain records showing the name and date of birth for each employee, including a copy of the photographic identification used to verify age. Prior to any employee's beginning employment, the operator shall bring the records to the Westbrook Police Department to verify the age of the prospective employee. These records must be maintained by the employer until six months after the employee ceases to work for the employer. These records are also subject to review by the Westbrook police on the business premises during normal operating hours.

(2) In the event that the Westbrook police reasonably suspect that any employee listed in the records is under the age of 18 years, they may copy the record for investigatory purposes. Any record or information so obtained, and any subsequent information developed therefrom, is declared to be "intelligence and investigative information" under 16 M.R.S.A. § 611, Subsection 8, the Criminal History Record Information Statute, which, if publicly disclosed, would endanger the life or safety of the individuals named therein. Record information may be disclosed to the person named therein, notwithstanding this declaration.

B. No person under the age of 18 years shall be admitted to any commercial establishment offering nude entertainment, as a customer or patron. The operator of each such establishment shall be responsible for verifying the age of each person entering the premises, through photographic identification.

C. No alcoholic beverages shall be sold, served or given away on the premises of any commercial establishment offering nude entertainment, whether for on-premises or off-premises consumption. Further, operators of any such establishment shall not allow customers or patrons to bring or consume alcoholic beverages on the premises.

D. There shall be no physical contact on the premises between patrons and dancers. For the purposes of this subsection, physical contact does not include incidental touching between a dancer and patron, but does include contact that occurs if a patron is giving a monetary tip to a dancer. In no case shall incidental contact be deemed to include physical contact otherwise prohibited by law.

E. Dancers or performers who remove any garments during the nude entertainment shall not toss or throw those garments to any customer or patron.

F. Dancers or performers providing the nude entertainment shall not engage in any sadomasochistic abuse or sexual conduct as defined in Section 22-48.

G. Nude entertainment presented in a commercial establishment shall not include any showing of the male or female genitals, pubic area, perineum or anus or the female breast below the top of the nipple of any person with less than a fully opaque covering.

H. No nude entertainment shall be presented after the hour of 1:00 a.m., local prevailing time. All premises offering nude entertainment shall be closed and cleared of customers and patrons between the hours of 1:15 a.m. and 6:00 a.m. Mondays through Saturdays and 9:00 a.m. Sundays, local prevailing time.

Sec. 22-50. Violations and penalties.

A. Any violation of this Article by the owner, lessee, licensee, permittee or operator of a premises shall constitute a land use violation and shall be subject to prosecution and penalties as provided in 30-A M.R.S.A. § 4452, provided that the minimum fine for any violation by such persons shall be \$500 for each offense. Each day in violation shall constitute a separate offense. In addition, the Code Enforcement Officer may suspend or revoke the use permit for any establishment offering nude entertainment in violation of this article, or in violation of conditions contained in the use permit. Suspension or revocation of a certificate of occupancy shall be subject to administrative appeal as provided in Section 703 of the Land Use Ordinance, subject to the various time requirements imposed under Section 22-48(I) above.

B. Any violation of this Article by a person other than the owner, lessee, licensee, permittee or operator of any premises shall be punished by a fine of not less than \$500 for the first offense, and not less than \$1,000 for the second and subsequent offenses. Each day in violation shall constitute a separate offense.

Sec. 22-51. Theatrical performances.

The provisions of Section 22-48 (A) through (D) shall not apply to theaters, dinner theaters, licensed movie theaters or similar establishments which are primarily devoted to theatrical performances or the presentation of movies, provided that any displays of live nudity within such theaters, dinner theaters, licensed movie theaters or similar establishments shall be limited to occasional nudity by bona fide stage actors during the course of theatrical performances; provided also that the provisions of Section 22-48 (E) through (H), 22-49 (C) through (H) and 22-50 of this Article shall apply to nude theatrical performances under this section.

APPLICABILITY DATE: Notwithstanding any other provision of law to the contrary, and to the maximum extent allowed by the State Savings Statute, 1 M.R.S.A. § 302, this ordinance when enacted shall be applicable to any use, application, change of use or related land use or licensing ordinance applications for any use not lawfully in existence as of September 22, 2010 when this ordinance first appeared on the City Council agenda.

Sec. 22-52 – 22-55. Reserved.

Chapter 23

PARKS AND RECREATION

Art. I. [In General](#), §§ 23-1 - 23-10

Art. II. [Recreation - Conservation Commission](#), §§ 23-11 - 23-17

ARTICLE I. IN GENERAL

Sec. 23-1. Riverbank Park - Joint management, care.

The tract of land situated on the northerly side of Main Street and extending from Dunn Street to the property of the Roman Catholic Church, known as Riverbank Park, is hereby placed under the joint management and care of the trustees of Woodlawn and Saccarappa Cemeteries and the mayor. (1942 Rev. Code, Ch. XXV, § 1)

Sec. 23-2. Loitering restricted.

No person shall stop, loiter, be or remain in any of the parks of the city between sunset and sunrise of the following day, unless doing so as part of a city sanctioned and supervised event. This restriction shall extend to all city owned structures associated with the Parks and the river including all landings, ramps and floats, which shall be considered part of the park system. (1942 Rev. Code, Ch. XXV, § 1; Ord. of 10-21-91)

Sec. 23-3. *Repealed.*

(1942 Rev. Code, Ch. XXV, § 2; Ord. of 10-21-91)

Sec. 23-4. Alcoholic beverages prohibited – Within city park or recreation property.

It shall be unlawful for any person to possess any alcoholic beverage or liquor, as defined by Title 28-A M.R.S.A. Section 2, within the boundaries of any city-owned, leased, managed or controlled park or recreation property, including on any landings, ramps or floats. Consumption of liquor in any park or recreation property shall be subject to the provisions of 17 M.R.S.A. Section 2003.. (Ord. of 6-9-80, 3-4-13)

Sec. 23-5. Police chief to post signs.

The chief of police shall cause to be posted appropriate signs giving notice of the prohibitions contained in sections 23-2 and 23-4 and 17 M.R.S.A. Section 2003 at the main entrances of the parks and such other as he deems necessary to assure compliance with the provisions of this chapter. (Ord. of 6-9-80; Ord. of 10-21-91)

Sec. 23-6. Access to the Presumpscot River from City owned land restricted.

No person shall enter the Presumpscot River from any City owned land, including landings, ramps and floats from the Northerly end of Dana Street to the Northerly end of Spiers Street or anywhere in between including Bridge Street and the Bridge Street Bridge, except with a personal watercraft and a flotation device. This restriction shall also apply to the Cumberland Street Bridge and from Cumberland Street along the Brown Street river front to the Westerly side of the railroad bridge and pedestrian crossing and shall include all of those structures.. (Ord. of 6-9-80 repealed. Ord. 3-4-13)

Sec. 23-7. Disruption of or interference with use of landing, ramp or float.

It shall be a violation of this article for any person to disrupt, or interfere with, the safe and lawful use of any city owned landing, ramp or float. (Ord. of 3-4-13)

Sec. 23.8. Watercraft, landings, ramps, floats; anchorages; menaces to navigation.

The city may take any required action to remove any unauthorized or abandoned watercraft, ramp, float, or other river hazard on City land within the banks of the Presumpscot River. (Ord. of 3-4-13)

Sec. 23.9. Use of City owned landings, ramps, floats.

- (a) *Tying up*: There shall be no overnight tie-ups. City owned landings, ramps and floats shall be used exclusively for put in and take out of recreational water craft.
- (b) *Storage*: Temporary storage of recreational water craft in connection with put in or take out shall be limited to a maximum of 15 minutes.
- (c) *Usage*: No person shall be on any city owned landing, ramp or float except for the purpose of put in or take out of recreational water craft.

(Ord. of 3-4-13)

Sec. 23-10. Penalty.

Any person violating any of the provisions of this section shall be punished by the fine set forth in the Master Fine Schedule attached hereto as Appendix C. If a fine is not paid, it may be recovered in an action brought pursuant to Rule 80H of the Maine Rules of Civil Procedure.

Sec. 23-10.1. Definitions.

Personal watercraft – any floating object designed and used primarily for self-propelled navigation on a body of water; including but not limited to, kayak, canoe, paddle board, inner tube.

Landing – that area of city owned land that within 20 feet of any city owned structure and which facilitates access to a city owned ramp or float extending in to the river.

Ramp – a structure also known as a “gangway” that bridges the gap between land and a water based float, across which pedestrians must travel to access the float.

Float – river based portable structures intended to sustain “dead load” and a working free board from which pedestrians can put in or take out personal watercraft.

(Ord. of 3-4-13)

ARTICLE II. RECREATION—CONSERVATION COMMISSION

Sec. 23-11. Created; composition; qualifications of members.

Under the authority of Title 30, Section 3552 and 3851 of the Maine Revised Statutes, there is hereby created a Westbrook Recreation—Conservation Commission which shall consist of seven (7) members who must be citizens and residents of the city. (Ord. of 12-7-70; Ord. of 12-21-87)

Sec. 23-12. Appointment, tenure, compensation of members.

The seven (7) members shall be appointed by the mayor, subject to the approval of the city council. The initial members shall be appointed for terms of one (1), two (2), three (3), four (4) and five (5) years. Thereafter all subsequent appointments, except to fill vacancies, shall be for a

term of five (5) years and until a successor is appointed and qualified. All appointments for the purpose of filling vacancies shall be for the unexpired term. The members of said commission shall serve without pay and a vacancy shall occur when a member ceases to be a resident of the city. (Ord. of 12-7-70, § 1; Ord. of 12-21-87)

Sec. 23-13. Election of officers.

Immediately after the appointment the members of said commission shall meet and elect a chairman, vice-chairman and a secretary, and other such officers as may be necessary, to serve for a period of one (1) year. (Ord. of 12-7-70, § 2)

Sec. 23-14. Meetings; records; quorum constituted.

The commission shall hold regular meetings and shall designate the time and place thereof, and shall keep a record of all its proceedings. Four (4) members of the commission shall constitute a quorum. An additional two (2) nonvoting, associate members may be appointed to assist the commission. (Ord. of 12-7-70, § 3; Ord. of 12-21-87; Ord. of 12-21-87)

Sec. 23-15. Powers and duties.

The Westbrook Recreation - Conservation Commission:

- (a) Shall have the responsibility of planning and developing an adequate and wholesome recreation program for the people of both sexes and all ages, including recreation centers, areas and facilities, in cooperation with the Westbrook Planning Board, which shall be supervised and maintained under the direction of the city recreation director throughout the city.
- (b) Shall have the power to conduct both indoor and outdoor recreation activities and facilities on all city property, subject to the approval of the city council, and in the school buildings, and on the school grounds which are in charge of the school committee, subject to its consent, and in cooperation with the Cornelia Warren Community Association and other organizations having similar recreational purposes.
- (c) Subject to the approval of the mayor, it shall have the power to call upon any other department of the city government for assistance in performing its duties, and it shall be the duty of such other departments to comply with the requests of said commission within the limits of its departmental budget.
- (d) Shall conduct research, in conjunction with the planning board, into the land area throughout the city and seek to coordinate the activities of other conservation bodies organized for similar purposes.
- (e) Shall prepare and keep an index of all "open areas" both publicly and privately owned, within the city, including swamps, and other wet lands, and waterways, for the purpose of obtaining information pertinent to the proper utilization, protection, development or use of such areas, and may recommend to the city council or any other municipal body, board or commission or any public agency of the state a program for the better utilization, protection, development or use of such areas, which may include the acquisition of conservation easements of land for city or area recreational purposes.

As used in this subsection "open areas" mean any space or area the preservation or restriction of the use of which would maintain or enhance the conservation of natural resources, protect natural streams of water supplies, enhance the value of the public

of abutting or neighboring parks, nature reservations or sanctuaries, affect or enhance public recreation opportunities, preserve historic sites, implement the plan of development adopted by the planning board or commission of any municipality and/or promote orderly urban or suburban development.

- (f) The commission may, with the approval of the city council, acquire by purchase or gift land and/or conservation easements in the name of the city for any of the purposes set forth in this section.
- (g) When in the opinion of the commission a parcel or parcels of land or easements therein should be acquired by the city for such conservation purposes but cannot be purchased from the owners thereof at a fair market value, the commission may recommend to the city council that it be acquired by condemnation proceedings as authorized by state law.
- (h) Subject to the approval of the city council, the commission may make and enter into such contracts as it may deem advisable to carry out the objectives and purposes of the commission, and shall have such other powers and perform such other duties, in conjunction with the planning board, as may be necessary for the proper administration of the affairs of the commission. (Ord. of 12-7-70, § 4)

Sec. 23-16. Recreation and conservation account; budget.

(a) The commission may solicit and receive federal and/or state grants of funds and private gifts or bequests to be used, principal or income, for municipal and area recreational and/or conservation purposes and all such funds shall be deposited with the city treasurer in a special city recreation - conservation account to be invested and/or appropriated as directed by the city council.

(b) The commission when requested by the mayor shall submit an estimate of its anticipated revenues and expenditures as its proposed budget for the ensuing fiscal year, to be approved in whole or in part by the city council as part of the city's annual budget; and the said commission must operate within its annual budget, subject to the city charter and existing ordinances, as approved by the city council, unless it is otherwise supplemented by the city council. (Ord. of 12-7-70, § 5)

Sec. 23-17. Annual reports.

The commission shall submit a written annual report to the mayor and the city council by January 30th of each year relative to the work of the commission during the prior fiscal year, and submit such other reports as may be requested by the mayor and/or the city council from time to time. (Ord. of 12-7-70, § 6)

Chapter 24
PLUMBING

Sec. 24-1. Adoption of state code.

The rules and regulations relative to plumbing work done within this state, known as the Maine State Plumbing Code, as adopted by the State Department of Health and Welfare under the authority conferred by 22 M.R.S.A. § 42 shall be the plumbing law or code of the city. (1942 Rev. Code, Ch. XLII, § 1; Ord. of 12-17-63; Ord. of 10-4-93)

Sec. 24-2. Plumbing permit fees.

(a) This section applies to fees charged by the city for plumbing and subsurface waste water disposal system permits issued pursuant to 30-A M.R.S.A. Sec. 4201, *et seq.* and pursuant to the State Plumbing Code. At the time of issuance, the plumbing permit applicant shall pay a fee in accordance with the Master Fee Schedule attached hereto as Appendix B.

(b) Any person who shall begin any work for which a permit is required by the State Plumbing Code, without first having obtained a permit therefore, shall, if subsequently eligible to obtain a permit, pay the fine set forth in the Master Fine Schedule attached hereto as Appendix C. Such additional amount shall be deposited within the city treasurer and shall not be part of the inspector's compensation. However, the foregoing provisions shall not apply to emergency work when it shall be proved to the satisfaction of the city plumbing inspector that such work was urgently necessary, and that it was not practical to obtain a permit before commencement of the work. In all such emergencies, the permit must be obtained within two (2) business days after the works have been started, or else the double fee shall be charged.

(c) For the purpose of this chapter, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached shall be construed to be a fixture. Fees for reconnection or retest of existing plumbing systems in relocated buildings shall be based on the number of plumbing fixtures, water heaters, etc., involved.

(Ord. of 12-27-73; Ord. of 10-4-93; Ord. of 11-25-02)

Sec. 24-3. Subsurface waste water disposal system fees.

Prior to the city plumbing inspector's issuance of a subsurface waste water disposal system permit, the permit applicant must pay the inspector a permit fee calculated in accordance with the Master Fee Schedule attached hereto as Appendix B.

(Ord. of 10-4-93)

Sec. 24-4. Plumbing inspector's compensation.

The city plumbing inspector shall issue any permit under this chapter upon receipt and approval of a completed application form and payment by the applicant of the fees established herein. One quarter of the fees received shall be retained by the city treasurer. The remainder shall be paid to the inspector, as reimbursement for his services. (Ord. of 10-4-93)

Chapter 25

POLICE

Art. I. [In General](#), §§ 25-1 - 25-15

Art. II. [School Patrol](#), §§ 25-16 - 25-27; *Reserved*, §§ 25-28 - 25-49

Art. III. [Sex Offender Ordinance](#), §§ 25-50—25-57, *Reserved* §§ 25-58 - 25-64

Art. IV. [Drug-Free Safe Zones](#), §§ 25-65; *Reserved*, §§ 25-66 - 25-70

ARTICLE I. IN GENERAL

Sec. 25-1. Manual of rules and regulations on file in clerk's office; unaffected by adoption of Code.

The Westbrook Police Department Manual of Rules and Regulations enacted on March 7, 1967, as amended, is on file in the city clerk's office, and the adoption of this Code shall in no way affect its validity.

Sec. 25-2. Burglar alarm systems.

(a) *Master panel; hook-up fee.* The police department may maintain a burglar alarm system master panel at the police station and regulate its use and the conditions required for hookup including, but not limited to, the obligation that any person or firm, as a condition to connecting its property to the master panel, must enter into an agreement with the city in a form prescribed by the chief of police. Users shall pay a hook-up fee as set forth in the attached Master Fee Schedule.

(b) *Automatic dialing device.* Any alarm system may be connected to the department by an automatic dialing device or similar system; however, no alarm user shall maintain any direct connection from an alarm system to the communications center of the police department.

(c) *Penalty for false alarms.* For the third and following police response to a false alarm within any calendar year, the alarm user shall pay a penalty as set forth in the attached Master Fine Schedule. (Ord. of 4-7-86; Ord. of 1-22-91)

Secs. 25-3 - 25-15. *Reserved.*

ARTICLE II. SCHOOL PATROL

Sec. 25-16. Mayor authorized to appoint personnel.

Upon the recommendation of the chief of police, the mayor is hereby authorized to appoint sufficient personnel to establish a school patrol. (1942 Rev. Code, Ch. XIV-A, § 1801.01; Ord. of 3-7-67)

Sec. 25-17. Qualifications of personnel generally.

Each appointee to the school patrol shall be of good character, of acceptable personality, good health and shall be sworn to the faithful performance of his duties. (1942 Rev. Code, Ch. XIV-A, § 1801.01; Ord. of 3-7-67)

Sec. 25-18. Age limits of applicants.

All applicants to the school patrol must be at least twenty-one (21) years of age, and all members of the school patrol shall be relieved from such duties and service upon reaching the age of seventy-two (72). (1942, Rev. Code, Ch. XIV-A, § 1801.01 (b) ; Ord. of 3-7-67)

Sec. 25-19. Applicants to submit to physical exam.

All applicants to the school patrol shall submit to a physical examination. (1942 Rev. Code, Ch. XIV-A, § 1801.01(a); Ord. of 3-7-67)

Sec. 25-20. City physician to conduct exam; report results to chief.

The physical examination required in this article shall be conducted by the city physician using standard police requirements, but shall make allowances as to the applicant's sex and age.

The examining physician shall report his findings to the chief of police in writing, reporting the applicant as qualified or disqualified. (1942 Rev. Code, Ch. XIV-A, § 1801.01(a) ; Ord. of 3-7-67)

Sec. 25-21. Chief may require annual physical exam.

The chief of police may require an annual physical examination of appointees to the school patrol, expenses to be paid by the city. (1942 Rev. Code, Ch. XIV-A, § 1801.01(a) ; Ord. of 3-7-67)

Sec. 25-22. Appointees not members of department; not under civil service.

The appointees to the school patrol shall not be considered to be members of the police department and shall not be under the terms of civil service. (1942 Rev. Code, Ch. XIV-A, § 1801.03; Ord. of 3-7-67)

Sec. 25-23. Appointees responsible to chief; removal; vacancies.

Each appointee to the school patrol shall be responsible to the chief of police, and any such appointee may be removed from service by the mayor when such removal is recommended by the chief of police. Vacancies shall be filled in the manner provided for original appointment. (1942 Rev. Code, Ch. XIV-A, § 1801.02; Ord. of 3-7-67)

Sec. 25-24. Appointee's authority in traffic matters.

An appointee to the school patrol shall have the same powers in matters of traffic control as are now vested in the members of the police department and may summons into the 9th District Court any violator of the traffic ordinance of the city and for the violation of any laws of the state relating to traffic control. (1942 Rev. Code, Ch. XIV2A, § 1801.06; Ord. of 3-7-67)

Sec. 25-25. Chief's duty to make assignments, fix hours, supervise work.

The chief of police shall have the authority to assign appointees to the school patrol to such localities as shall be best suited to offer protection to those attending school, shall fix their hours of service, and shall be sole supervisors of the duties of each such appointee. (1942 Rev. Code, Ch. XIV-A, § 1801.02 ; Ord. of 3-7-67)

Sec. 25-26. Mayor, council to establish compensation.

The mayor and council shall fix the compensation to be paid all appointees to the school patrol and shall direct the manner of payment. (1942 Rev. Code, Ch. XIV-A, § 1801.04; Ord. of 3-7-67)

Sec. 25-27. Appointees to be issued badge, etc.

Each appointee to the school patrol shall, at the expense of the city, be supplied with a suitable badge and such other equipment as shall be prescribed by the chief of police. (1942 Rev. Code, Ch. XIV-A, 1801.05; Ord. of 3-7-67)

Secs. 25-28 - 25-4, Reserved.

ARTICLE III. SEX OFFENDER ORDINANCE

Sec. 25-50. Authority.

This ordinance is enacted pursuant to Title 30-A M.R.S.A. Section 3001 and amended pursuant to 30-A M.R.S.A. Section 3013. (Ord. of 9-17-07; Ord. of 9-14-09)

Sec. 25-51. Purpose.

In acknowledgement that sex offenders who prey upon children are at a higher risk of re-offending, the City of Westbrook has a compelling interest to protect the health, safety, and welfare of its children by restricting access to areas where concentrations of children exist.

Sec. 25-52. Definitions.

- A. **Registered / Convicted Sex Offender** - An individual convicted of a crime listed in former title 17, sections 2922 to 2924 or Title 17-A, chapter 11 or 12 or Title 17-A, section 556; for an attempt or solicitation of those listed crimes; or for any former or current crime in any other jurisdiction which the person engaged in substantially similar conduct to that of the earlier specified current or former Maine crimes, in this State or in another jurisdiction against persons who had not attained 14 years of age at the time of the offense.
- B. **School** – Any public or private elementary, middle or secondary school.
- C. **Residence** – That place or those places, other than a domicile, in which a person may spend time living, residing, or dwelling. (Ord. of 9-14-09)

Sec. 25-53. Restrictions; Registration.

Any person who is a convicted sex offender involving a person under 14 years of age shall not reside within a maximum distance of 750 feet of the property line of a school, or within a maximum distance of 750 feet surrounding the real property comprising a municipally owned property where children are the primary users. (Ord. of 9-14-09)

Sec. 25-54. Exceptions.

A convicted sex offender residing within 750 feet of a school or within a maximum distance of 750 feet surrounding the real property comprising a municipally owned property where children are the primary users is not in

violation of this ordinance if the residency was established prior to the date of passage or amendment of this ordinance. (Ord. of 9-14-09)

Sec. 25-55. Violation; Injunctive Relief and Penalties.

Any person who, after written notice from the City about the requirements of this ordinance, remains in violation of the provisions of this ordinance, shall be subject to an action brought by the City in the District Court or Superior Court to enforce the requirements of this ordinance. The City may seek injunctive relief to require compliance with the provisions of the ordinance. The City may also seek a penalty in the minimum amount of \$500, which may be imposed on a daily basis for each day that a violation continues after notice from the City. In the event that the City is the prevailing party in an action under this ordinance, it shall be entitled to an award of its reasonable attorney's fees, expert witness fees, or any other associated costs. (Ord. of 9-14-09)

Sec. 25-56. Severability.

In the event that any section or any portion of this ordinance shall be declared by any court of competent jurisdiction to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section or portion of this ordinance. The provisions of this ordinance are hereby declared to be severable. (Ord. of 9-14-09)

Sec. 25-57. Repealed (Ord. of 9-14-09)

ARTICLE IV. DRUG-FREE SAFE ZONES

Sec. 25-65. Drug-free Safe Zones.

Pursuant to 30-A M.R.S.A. § 3253, the city council has designated the locations contained in the list attached hereto as Appendix D as drug-free “safe zones,” which term is defined in 17-A M.R.S.A. § 1101(23). The city council may amend Appendix D by order of the city council.

Secs. 25-66 - 25-70, Reserved.

(Ord. of 7-12-10)

Chapter 26

SANITARY FACILITIES, SEWERS AND WASTEWATER TREATMENT¹

Art. I. [In General](#), §§ 26-1 - 26-49

Art. II. [Sewer Assessments](#), §§ 26-50 - 26-53

ARTICLE I. IN GENERAL

Sec. 26-1. Scope of chapter.

The provisions of this chapter shall apply to and govern sanitary facilities, sewers and wastewater treatment; the excavation, construction, installation, usage, maintenance, extension, alteration, repair, or removal of any building sewer, building storm drain, sanitary sewer system, or storm drainage or sewer system; the connection of building sewers and building storm drains to sanitary sewer systems, storm drainage systems or combined sewers; the type of wastewaters prohibited from public sewers and storm drainage systems; permitted and prohibited concentrations and strengths of wastewater; and situations in which use of a private sewage disposal system is permissible. (Ord. of 9-19-77)

Sec. 26-2. Intent and purpose of chapter.

(a) It shall be the intent and purpose of this chapter to reduce, to the extent practicable, existing pollution, to prevent further pollution caused by inadequate wastewater disposal, and to accomplish the necessary local legislation to meet the requirements of the Portland Regional Wastewater Plan established by the Portland Water District, the state and the federal government. All this is in furtherance of the health, welfare, comfort and convenience of the inhabitants of the city.

(b) Whereas the Portland Water District has been designated by state legislative action and local public referendum as the regional agency responsible for wastewater treatment, none of the provisions of this chapter shall be construed to repeal or otherwise interfere with the rights, duties and/or powers granted to the Portland Water District pursuant to Chapter 433 of the private and special laws of the State of Maine of 1907, as amended. (Ord. of 9-19-77)

Sec. 26-3. Enforcing officer.

The city engineer shall administer and enforce the provisions of this chapter. (Ord. of 9-19-77)

Sec. 26-4. Definitions.

For the purposes of chapters 26 & 27, all words shall have their normal meaning and such meaning as may be in common use in the field of sanitation and wastewater treatment. Certain words are more particularly defined. For the purposes of these chapters, the terms:

- (a) *Act* shall mean the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. § 1251 et seq., 86 Stat 816, Pub L 92-500 and the regulations promulgated thereunder, as amended from time to time.

¹ **Charter reference** – Sewerage regulations, §§ 15 – 15-I; **State law reference** – Sewage disposal systems, sewers and drains generally, 30-A M.R.S.A. § 3401 et seq.

- (b) *Authorized Representative*. Shall mean duly authorized representative appointed by a User who is:
- (1) A principal executive officer of at least the level of vice-president, if the User is a corporation;
 - (2) A general partner or proprietor if the User is partnership or sole proprietorship, respectively;
 - (3) A member of the governing board or executive officer of a governmental entity, if the User is a governmental facility; or
 - (4) A duly authorized representative of the individual designated above if such representative is responsible for the overall operation of the facilities from which the Industrial Discharge originates, or has overall responsibility for environmental matters for the User, provided however that the authorization is made in writing by the individual described above, and the written authorization is made in writing by the individual described above, and the written authorization is submitted to the District.
- (c) *B.O.D. (Denoting biochemical oxygen demand)* shall mean the quantity of oxygen utilized in the biochemical oxidation of wastewater under standard laboratory procedure in five (5) days at 20° C, expressed in milligrams per liter.
- (d) *Biosolids (Sludge)* shall mean waste containing varying amounts of solid contaminants removed from the water, sanitary sewage, wastewater or industrial wastes by physical, chemical and biological treatment.
- (e) *Building* shall mean a structure built, erected and framed of component structural parts designed for the housing, shelter, enclosure or support of persons, animals or property of any kind.
- (f) *Building drain* shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, which begins eight (8) feet outside the outer face of the building wall.
- (g) *Building sewer* shall mean the extension from the building drain to the public sewer or other place of disposal.
- (h) *Categorical Industrial User* shall mean an Industrial User subject to National Categorical Pretreatment Standards.
- (i) *Caustic alkalinity* (Hydroxide alkalinity) shall mean that material which raises the pH of water above 8.3, equivalent to (2 x phenolphthalein alkalinity – total alkalinity) provided the phenolphthalein alkalinity is greater than ½ total alkalinity.
- (j) *City* shall mean the City of Westbrook, Maine.
- (k) *City engineer* shall mean the City Engineer or his duly authorized representative.
- (l) *Cooling water* shall mean the water discharged from cooling devices such as air conditioning, cooling or refrigeration units.
- (m) *Combined sewer* shall mean a pipe or conduit receiving both surface runoff and wastewater.

- (n) *Commercial wastes* shall mean any wastes from commercial establishments as distinct from domestic wastewaters or industrial wastes.
- (o) *C.O.D. (chemical oxygen demand)* shall mean the measure of the oxygen required for oxidation of that portion of the wastewater in a sample that can be oxidized by a strong chemical oxidizing agent.
- (p) *D.E.P.* shall mean the Maine Department of Environmental Protection.
- (q) *Department* shall mean the Department of Public Works of the City of Westbrook, Maine, or a duly authorized representative.
- (r) *District* shall mean the Portland Water District, a quasi-municipal corporation organized under Maine law, and located at 225 Douglass Street, Portland, Maine 04104.
- (s) *Domestic wastewater* shall mean the liquid wastes and liquid borne wastes discharged from the sanitary conveniences such as toilets, washrooms, urinals, sinks, showers, drinking fountains, home laundry rooms, kitchens and floor drains essentially free of industrial wastes or toxic materials.
- (t) *Facility.* See POTW – Publicly Owned Treatment Works.
- (u) *F.O.G.* shall mean the measure of fats, wax, grease and oils (other than petroleum based materials).
- (v) *Garbage* shall mean solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.
- (w) *Grab sample* shall mean a sample which is taken from a waste stream without regard to the flow in the waste stream and over a period of time not to exceed fifteen (15) minutes.
- (x) *Incompatible pollutant* shall mean any pollutant other than biochemical oxygen demand, suspended solids, pH and fecal coli form bacteria.
- (y) *Indirect discharge* or *Discharge* shall mean the introduction into the Facility of pollutants from any source, other than a domestic wastewater regulated under section 307(b), (c) or (d) of the Act.
- (z) *Industrial discharge permit* or *permit* shall mean the document issued by the City of Westbrook and the Portland Water District as set forth in these Regulations.
- (aa) *Industrial user* shall mean a source of Indirect Discharge or any source which discharges Industrial Waste to the Facility.
- (bb) *Industrial wastes* shall mean any wastes from industrial processes as distinct from domestic or commercial wastewater.
- (cc) *Interference* shall mean a discharge which, alone or in conjunction with discharges from other sources which inhibit or disrupt the Facility, its treatment processes or operation, or its sludge processes, use or disposal, and which is a cause of a violation of any requirement of the District's MePDES Permit (including an increase in the magnitude of duration of a violation).
- (dd) *MePDES* shall mean Maine Pollution Discharge Elimination System or permit issued by the State of Maine for discharges from a wastewater treatment facility.

- (ee) *mg/L* means milligrams per liter.
- (ff) *NAICS* shall mean the North American Industry Classification System. A system of classifying industries by the nature of their process. Replaced the Standard Industrial Classification system.
- (gg) *National Categorical Pretreatment Standard* shall mean any regulations containing pollutant discharge limits promulgated by EPA in accordance with Section 307(b) and (c) of the Act, which apply to a specific category of Industrial Users and which are found in 40 CFR Chapter I, Subchapter N, Parts 405 through 471.
- (hh) *National Categorical Pretreatment Standard or Pretreatment Standard* shall mean any regulation containing pollutant discharge limits promulgated by the EPA in accordance with sections 307(b) and (c) of the Act which applies to Industrial Users, including prohibited discharge limits established pursuant to 40 C.F.R. § 403.5.
- (ii) *New Source* shall mean any building, structure, facility, or installation as described in 40 C.F.R. § 403(k)(1) from there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act which will be applicable to such Standards are thereafter promulgated in accordance with that section.
- (jj) *Non-significant industry* shall mean an industry which does not meet the definition of a Significant Industrial User, but is regulated by the District because it has a possibility of discharging incompatible pollutants in excess of local discharge limits or is required to have a spill control plan.
- (kk) *Owner* shall mean the owner of record according to the Westbrook Tax Assessor's files and shall include his agent or contractor relative to the excavation and installation requirements of this Chapter.
- (ll) *Pass through* shall mean the discharge of pollutants through the Facility into Waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of violation of any requirement of the District's NPDES Permit (including an increase in the magnitude or duration of a violation).
- (mm) *Person* shall mean any individual, firm, company, association, society, corporation, group, trust or governmental authority.
- (nn) *pH* shall mean the logarithm (base 10) of the reciprocal of the Hydrogen ion concentration in a solution expressed as standard units.
- (oo) *Pollutant* shall mean any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, in whatever form and whether originating at a point or non-point source, which is or may be discharged, drained, or otherwise introduced into the Facility, or waters of the state.
- (pp) *Pollution* shall mean the man-made or man induced alteration of the chemical, physical, biological, or radiological integrity of water.
- (qq) *POTW Publicly Owned Treatment Works ("Facility")* shall mean the treatment works, as defined by Section 212 of the Act, operated by the District. This definition includes any devices and systems used in the storage, treatment, recycling, disposal, and reclamation of wastewater and sewage consisting of domestic,

commercial, municipal, and industrial wastes of a liquid nature. It also includes those sewers, pipes, and other conveyances which convey wastewater to the Facility. For the purposes of these Rules and Regulations, POTW shall also include any sewers that convey wastewaters to the treatment works from Persons who are, by permit, contract, or agreement with the District, Users of the Facility.

- (rr) *POTW Treatment Plant* shall mean that portion of the Facility designed to provide treatment (including recycling and reclamation) of wastewater, municipal sewage, industrial waste, septage and holding water.
- (ss) *Pretreatment* shall mean the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the Facility. The reduction or alteration can be obtained by physical, chemical or biological processes, process changes, or other means, except as prohibited by 40 C.F.R. § 403.6(d).
- (tt) *Pretreatment requirements* shall mean any substantive or procedural requirement related to pretreatment, other than a National Categorical Pretreatment Standard imposed on a User by the District through its permit process as defined in 4.1 of these Rules and Regulations.
- (uu) *Private sewage disposal system* shall mean a treatment tank with the effluent discharging into a subsurface absorption area, or such other facilities as may be permitted under the procedures set forth in rules and regulations adopted by the State of Maine Bureau of Health.
- (vv) *Private wastewater treatment works* shall mean all facilities other than "private sewage disposal systems" for treating and disposing of wastewater within the city, not owned by a public authority. "Private wastewater treatment works" shall be distinct from "private sewage disposal systems" as the effluent is discharged directly into surface water bodies.
- (ww) *Properly shredded garbage* shall mean the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch (1.27 centimeters) in any dimension.
- (xx) *Public sewer* shall mean a common sewer which is controlled by a public authority and becomes a part of the public sewerage system.
- (yy) *Sanitary sewage* shall mean liquid and water-carried human and domestic wastes from residences, commercial buildings, industrial plants and institutions, exclusive of ground, storm and surface water and exclusive of industrial wastes.
- (zz) *Sanitary sewer* shall mean a sewer which carries wastewater and to which storm, surface and groundwater are not intentionally admitted.
- (aaa) *Septage* shall mean any waste, refuse, effluent, sludge or other material derived from a septic tank, cesspool, vault privy, or similar source which concentrates wastes or to which chemicals have been added. Per this definition, portables are considered to be septage.

- (bbb) *Sewer* shall mean a pipe or conduit for carrying and transporting wastewater.
- (ccc) *Sewerage system* any device, equipment, or works used in the transportation, pumping, storage, treatment recycling, reclamation, and disposal of sewage and industrial wastes.
- (ddd) *Shall* is mandatory; *May* is permissive.
- (eee) *Significant Industrial User* shall mean any industrial user subject to Categorical Pretreatment Standards, and any other Industrial User that discharged an average of 25,000 gallons per day or more of process wastewater to the Facility (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW Treatment Plant; or is designated as such by the District on the basis that the Industrial User has a reasonable potential for adversely affecting the Facility's operation or for violating any Pretreatment Standard or Requirement; provided, however, that upon a finding that an Industrial User meeting the foregoing criteria has no reasonable potential for violating any Pretreatment Standard or Requirement or for adversely affecting the Facility's operation, the District may at any time, upon its own initiative or in response to a petition received from an Industrial User, and in accordance with 40 C.F.R. 403.8(f)(6), determine that such Industrial User is not a Significant Industrial User.
- (fff) *Significant noncompliance* shall mean a violation which meets one or more of the following criteria:
- (1) Chronic violations of wastewater discharge limits, to include those in which sixty-six percent or more of all of the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the average limit for the same pollutant parameter;
 - (2) Technical review criteria (TRC) violations, to include those in which thirty-three percent or more of all the measurements for each pollutant parameter taken during a six month period equal or exceeding the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC-1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH).
 - (3) Any other violation of a pretreatment effluent limit (daily maximum or longer-term average) that the District determines has caused, alone or in combination with other discharges, Interference or Pass Through (including endangering the health of POTW personnel or the general public);
 - (4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority of the Rules and Regulations; to halt or prevent such a discharge;
 - (5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in the Permit or enforcement order for starting construction, completing construction, or attaining final compliance;

- (6) Failure to provide, within 30 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;
 - (7) Failure to accurately report noncompliance;
 - (8) Any other violation or group of violations which the District determines will adversely affect the operation or implementation of the pretreatment program.
- (ggg) *Sludge (Biosolids) or Solids* shall mean waste containing varying amounts of solid contaminants removed from water, sanitary sewage, wastewater or industrial wastes by physical, chemical and biological treatment.
- (hhh) *Slug* shall mean any discharge of water, sewage, wastewater or industrial waste which in concentration of any given constituent or in the flow rate exceeds for any period of duration longer than fifteen (15) minutes more than five (5) times the average twenty-four-hour concentration or flow rate during normal operation as measured at the treatment plant.
- (iii) *Storm drain (sometimes termed "storm-sewer")* shall mean a pipe or conduit which carries storm and surface waters and drainage, but excludes wastewater and industrial wastes other than unpolluted cooling water.
- (jjj) *Storm water* shall mean any flow occurring during or following any form of natural precipitation, and resulting therefrom.
- (kkk) *Suspended solids* shall mean solids that either float on the surface of, or are in suspension in water, wastewater or other liquids, and which are measured by laboratory filtration.
- (III) *Toxic pollutant* shall mean any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the Environmental Protection Agency under section 307(A)(1) of the Act, or other statutes, regulations or ordinances.
- (mmm) *User* shall mean any Domestic, Commercial or Industrial Source which discharges wastewater to the Facility.
- (nnn) *Wastewater treatment works* shall mean all facilities for collecting, pumping, treating and disposing of wastewater.
- (ooo) *Wastewater* shall mean a combination of the liquid and water-carried industrial, non-domestic or domestic wastes, including sewage, industrial waste, other wastes, or any combination thereof, from dwellings or facilities. The term "sewage" may be used interchangeably with the term wastewater.
- (ppp) *Watercourse* shall mean a channel in which a flow of water occurs, either continuously or intermittently.
- (qqq) *Waters of the State* shall mean all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, border upon or are within the jurisdiction of the State of Maine.

- (rrr) *Westbrook sewer commission* shall mean a board of three (3) members appointed pursuant to section 15-B of the Westbrook City Charter and charged with the administration of the public sewerage system. (Ord. of 9-19-77; Ord. of 5-15-06)

Sec. 26-5. Sanitary facilities required.

Every building intended for human habitation shall be provided with suitable and sufficient sanitary facilities for the use of the occupants thereof. Every building intended for temporary occupancy, for employment, recreation or other such uses shall be provided with suitable and sufficient sanitary facilities except where such facilities shall comply with all health laws of the state and the City of Westbrook Code of Ordinances in character, number and method of installation. (Ord. of 9-19-77; Ord. of 5-15-06)

Sec. 26-6. Sanitary sewerage system required; connection to public sewer.

Every building requiring sanitary facilities under section 26-5 and located on premises abutting a public sewer and being within two hundred (200) feet of such public sewer shall have a sanitary sewerage system which shall be connected with the public sewer by the owner of the premises in the most direct manner possible, and with a separate building sewer for each such building on the premises unless otherwise authorized by the city engineer, unless such buildings are serviced by an approved wastewater treatment works. (Ord. of 9-19-77)

Sec. 26-7. Permit required.

No person shall uncover, make any connection with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the sewerage division of the public works department. All such work shall comply with all applicable state and local codes, ordinances, statutes and regulations. (Ord. of 9-19-77)

Sec. 26-8. Two classes of permits; application.

(a) There shall be two (2) classes of building sewer permits: One for residential service, and one for service to establishments producing industrial or commercial wastes.

(b) In all cases, the owner shall make application on special forms furnished by the city. The permit application form shall be supplemented by any plans, specifications or other information considered pertinent in the judgement of the city engineer. (Ord. of 9-19-77)

Sec. 26-9. Discontinuance of private sewage disposal facilities; inspection.

At the time that direct connection to the public sewer is completed, use of the private sewage disposal facilities shall be discontinued and abandoned. Such abandoned facilities shall be in compliance with the Maine State Plumbing Code. (Ord. of 9-19-77)

Sec. 26-10. Connection within one year required.

Connection to the public sewerage system shall be completed within one year after the official notice to do so. (Ord. of 9-19-77)

Sec. 26-11. Inspection, testing, etc., to be permitted.

(a) The city engineer and/or his duly authorized representatives, bearing proper credentials and identification, shall be permitted to enter upon all premises with sewer and/or storm drainage systems which discharge domestic wastewater into the public sewer system, but only at reasonable times and upon reasonable notice, for the purpose of inspection, observation, measurement, sampling and testing in accordance with the provisions of this Chapter.

(b) Whenever any inspection of work is required under this chapter, the owner or his agent shall notify the city engineer twenty-four (24) hours prior to the time such work shall be ready for such inspection and shall arrange a time for such inspection during the next succeeding working day. The city engineer shall inspect the work during the said next working day, and if he shall fail to make such inspection, where such failure is not caused by the owner or his agent, the work shall be considered approved. (Ord. of 9-19-77)

Sec. 26-12. Damaging structures, equipment prohibited.

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the sewerage works of the city. (Ord. of 9-19-77)

Sec. 26-13. Fees: Established; bills rendered; liability; delinquent.

(a) Permit, inspection and entrance fees not provided for in this chapter shall be established by the city council after receiving the recommendations of the sewer commission. A schedule of such fees shall be on file in the city clerk's office and in the office of the city engineer.

(b) Sewer user fees, industrial surcharges and industrial cost recovery charges shall be determined as provided in the sewer user fee and industrial cost recovery chapter. A schedule of all such fees and charges shall be on file in the city clerk's office and in the office of the city engineer. (Ord. of 9-19-77)

Sec. 26-14. General regulations for connection to public sewer.

(a) The connection of a building sewer into the public sewer shall be made only under the supervision of the city engineer upon notification that a proper excavation for the connection has been completed in accordance with the written permit for doing so.

(b) No backfilling of trenches shall be done until the connection meets the approval of the city engineer.

(c) If a wye or tee branch in the public sewer is available at a suitable location, the connection shall be made at the branch. Where the public sewer is eight (8) inches or greater in diameter and no properly located wye or tee branch is available, a neat hole may be cut into the public sewer and a special cast iron hub installed as follows: A smooth neat joint shall be made, and the connection made secure and watertight by encasement in brick and cement mortar. Special fittings may be used if approved by the city engineer prior to installation. (Ord. of 9-19-77)

Sec. 26-15. Use of old sewers with new buildings.

Old building sewers may be used in connection with new buildings only when such building sewers are found to meet all requirements of this Chapter and of all applicable state laws and are approved by the city engineer. (Ord. of 9-19-77)

Sec. 26-16. Expense of installation, connection; indemnification of city.

(a) All costs and expenses incident to the installation and connection of the building sewer required by section 26-6 shall be borne by the owner, and it shall be the responsibility of the owner to maintain this sewer in good working order from the building to the public sewer. A properly installed and maintained backwater valve shall be provided by the owner on all drains connecting to the public sewer system, where such valve is required under the Maine State Plumbing Code.

(b) The owner shall indemnify the city for any loss or damage that may directly or indirectly be occasioned by the installation or repair of the building sewer. (Ord. of 9-19-77)

Sec. 26-17. Building sewer construction standards generally.

(a) Whenever possible, a sewer shall be brought to a building at an elevation below the basement floor. The depth shall be sufficient to afford protection from frost.

(b) If a building sewer shall be laid parallel to any bearing wall, it shall not be closer than three (3) feet to such wall. The building sewer shall be laid at a uniform grade and in straight alignment insofar as possible. Changes in direction shall be made only with properly curved pipe fittings. (Ord. of 9-19-77)

Sec. 26-18. Required pipe; regulation of joints.

All new or replaced building sewers shall conform to the requirements of the State Plumbing Code in type of piping and joints used. (Ord. of 9-19-77)

Sec. 26-19. Size, slope of building sewer.

(a) The size and slope of a building sewer shall be subject to the approval of the city engineer, but in no event shall the diameter be less than four (4) inches.

(b) The slope of such four-inch pipe shall be not less than one-eighth (1/8) inch per foot. (Ord. of 9-19-77)

Sec. 26-20. Excavations to be open trench work.

All excavations required for the installation of a building sewer shall be open trench work unless otherwise approved by the city engineer. All such excavations shall comply with all applicable state and federal safety regulations, copies of which are on file in the office of the city engineer. (Ord. of 9-19-77)

Sec. 26-21. Pipe laying, backfill regulated.

Pipe laying and backfill required for the installation of a building sewer shall be performed to the satisfaction of the city engineer, and no backfill shall be placed until the work has been inspected and approved. (Ord. of 9-19-77)

Sec. 26-22. Excavations to be barricaded, lighted.

All excavation for building sewer installation shall be adequately guarded with barricades and lights maintained by the owner so as to protect the public from hazard. (Ord. of 9-19-77)

Sec. 26-23. Property disturbed during excavation to be restored.

Streets, sidewalks, parkways and other public property disturbed when excavating for installation of building sewers shall be restored in a manner satisfactory to the city engineer and shall be in accordance with "The Street Excavation Ordinance of the City of Westbrook." (Ord. of 9-19-77)

Sec. 26-24. Excavations adjacent to public sewers by power equipment.

No excavation by power equipment shall be made over or immediately adjacent to any public sewer unless the city engineer has been so notified in advance and is present to supervise the excavation. (Ord. of 9-19-77)

Sec. 26-25. Capping of sewer required; inspection; fees.

In the case of buildings being removed and their basements filled and graded or left open, the building sewer shall be properly capped at the street right-of-way line to the satisfaction of the city engineer. Notice of intent to demolish a building shall be given by the owner to the city engineer by means of a copy of the permit to demolish issued by the code enforcement office. Inspection of all such capping shall be done by the city engineer prior to any backfilling. (Ord. of 9-19-77)

Sec. 26-26. Drainage required when gravity flow prevents discharge into public sewer.

In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such drain shall be lifted by approved means and discharged to the building sewer. (Ord. of 9-19-77)

Sec. 26-27. Privies regulated.

No person shall build or maintain a privy except in strict compliance with all applicable state laws and regulations. And in no event shall any privy be located closer than one hundred (100) feet from the property line of the premises, nor shall any privy be maintained in such a way as to cause any health hazard or public nuisance. (Ord. of 9-19-77)

Sec. 26-28. Exception for private sewage system.

Where the public sewer does not abut the premises upon which the building is located or where the public sewer does abut the premises but does not extend to within two hundred (200) feet from the nearest point of the building, the public sewer shall be classified as inaccessible to any such building required to be provided with sanitary facilities under section 26-5 of this chapter; such building shall comply with the following:

- (a) The owner may at his own expense connect with the public sewer even though the building is over two hundred (200) feet from said public sewer;
- (b) Where liquid-carried wastes or wastewater result, they shall discharge into a private sewage disposal system as defined herein; or
- (c) Where liquid-carried wastes or wastewater result, they shall discharge in a private wastewater treatment works as defined herein. (Ord. of 9-19-77)

Sec. 26-29. Prohibited wastes.

In addition to the prohibitions described in Section 26-30 below, the following discharges to the Facility are specifically prohibited:

- (a) Water from roof downspouts, foundation drains, or areaway drains, or other sources of surface runoff or groundwater; nor discharge or cause to be discharged any storm water, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters, except into storm drains.
- (b) Any gasoline, benzene, naphtha, fuel, flammable or explosive liquid, solid or gas.
- (c) Any petroleum oil, non-biodegradable cutting oil or products of mineral oil origin in amounts that will cause Interference or Pass Through.
- (d) Any sludges or deposited solids resulting from an industrial pretreatment process.
- (e) Any radioactive wastes greater than allowable releases as specified by state or federal regulation.

- (f) Any waters or wastes containing toxic or poisonous solids, liquids or gases in sufficient quantity, as determined by the city engineer, either singularly or by interaction with other wastes, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of any wastewater treatment plant now or in the future to be treating wastewater from the city; including, but not limited to those which exceed the limitations set forth in a National Categorical Pretreatment Standard found in 40 C.F.R. Chapter I, Subchapter N, Parts 405-471, the Local Discharge Permit issued pursuant to those as defined in standards issued from time to time under Section 307(a) of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500. A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to Section 307(a) of the Act and as listed at 40 C.F.R. Part 403, App. B.
- (g) Any slug of wastes as defined in section 26-4, subsection (hhh).
- (h) Any wastes or wastewaters having solid or viscous material which could cause an obstruction to flow in the Facility or in any way could interfere with the treatment process, including as examples of such materials, but without limiting the generality of the foregoing, significant proportions of ashes, wax, paraffin, cinders, sand, mud, straw, shavings, metal, glass, rags, lint, feathers, tars, plastics, wood and sawdust, hair and fleshings, whole blood, paunch manure, entrails, lime slurries, beer and distillery, slops, grain processing wastes, grinding compounds, acetylene generation sludge chemical residues, acid residues, food processing bulk solids, snow, ice, and whole or ground seafood shells, whole blood, underground garbage, paper dishes, sups, whole or ground mild containers, and all other solid objects, material, refuse, and debris not normally contained in sanitary sewage.
- (i) Any waste which, either singly or by interaction with other wastes may result in the presence of toxic vapors, gases, or fumes within the POTW in a quantity that may cause worker health or safety problems, or are sufficient to prevent entry into the sewers for maintenance and repair.
- (j) Any substance which may cause the Facility's effluent or any other product of the Facility such as biosolids, sludges, or scums, to be unsuitable for disposal in a permitted landfill or for reclamation and reuse, or to interfere with the reclamation and reuse process. In no case shall a substance discharged to the facility cause the facility to be in noncompliance with sludge use or disposal criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, or Maine D.E.P. "Rules for Land Application of Sludge and Residuals" – M.R.S.A. Title 38, Section 1304, Chapter 567.
- (k) Any pollutants, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which will cause Interference to the Facility or Pass Through to the Waters of the State.
- (l) The city engineer may also prohibit or limit any hexavalent chromium, aluminum, tin, fluorides, phenols, chlorides or sulfates.
- (m) Any reducing substances having an immediate chlorine demand exceeding 30.0 mg/l.

- (n) Any waters or wastes which cause corrosive structural damage to the sewers or treatment works including, but not limited to, any wastes having a concentration of caustic alkalinity exceeding 1000 mg/l, or all wastes with a pH lower than 5.0.
- (o) Any liquid or vapor other than water having a temperature higher than one hundred-fifty (150) degrees Fahrenheit (65 C).
- (p) Any waste which may create a fire explosion hazard in the facility, including, but not limited to, waste streams with a closed cup flash point of less than one hundred forty (140) degrees Fahrenheit (60 degrees Centigrade) using the test methods specified in 40 CFR 261.21.
- (q) Any waters or waste containing fats, wax, grease or oils, whether emulsified or not, in excess of one hundred (100) mg/l, or containing substances which may solidify or become viscous at temperatures between thirty-two (32) degrees and one hundred-fifty (150) degrees Fahrenheit (0 and 65 C). (Ord. of 9-19-77; Ord. of 5-15-06)

Sec. 26-30. Prohibition of wastes.

In addition to the prohibitions listed in Section 26-29 above, the discharge limitations placed in Chapter 27, Article III, Schedule A also apply. (Ord. of 9-19-77; Ord. of 6-14-82; Ord. of 5-16-83; Ord. of 5-15-06)

Sec. 26-31. Discharge of prohibited waste.

If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters or wastes contain any of the substances or possess the characteristics listed in sections 26-29 or 26-30 of this chapter or Chapter 27, Article III, Schedule A, the city engineer may:

- (a) Reject the wastes, or
- (b)
 - (1) Require pretreatment to an acceptable condition for discharge to the public sewer, and/or
 - (2) Require control over the quantities and rates of discharge (flow equalization), and/or
 - (3) Require payment to cover the added cost of handling and treating the wastes.

If the city engineer elects to require pretreatment, flow equalization and/or additional payment, such action must be approved by the sewer commission if such course of action is to continue for more than ninety (90) days.

If the city engineer permits or requires pretreatment and/or wastes flow equalization, the design and installation of the waste treatment facilities and equipment shall be subject to his review and approval to assure that the system will perform as required. Where preliminary treatment and/or flow equalizing facilities are provided for any water or wastes, the owner shall bear the cost and responsibility for installing and maintaining them in continuously satisfactory and effective operating condition, determined by the city engineer. (Ord. of 9-19-77; Ord. of 5-15-06)

Sec. 26-32. Control manholes, industrial monitoring and records required.

(a) When required by the city engineer, the owner or his agent of any property serviced by a building sewer carrying industrial wastes to a public sewer shall install a suitable control

manhole with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessible and safely located and shall be constructed in accordance with plans reviewed and approved by the city engineer. Such manhole shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.

(b) The owner (or his agent) of such property shall perform such monitoring of its industrial discharge as the city engineer may reasonably require, including the installation and maintenance of monitoring equipment, and shall keep records of the results of such monitoring and report the results of such monitoring to the city engineer. Such records shall be made available by the city engineer to the Portland Water District, to the Maine Department of Environmental Protection and to the regional administrator of the United States Environmental Protection Agency upon request. All such records shall be retained by the owner or his agent for a minimum of three (3) years, and prior to the destruction of any such records, the city engineer shall be notified. He may require the delivery to his office of any such records proposed to be destroyed which he feels may aid him in the discharge of his duties under this chapter.

(c) The city engineer and other duly authorized employees of the city, bearing proper credentials and identification, shall have access to and shall be permitted to copy any records required under this section of this Chapter. (Ord. of 9-19-77)

Sec. 26-33. Separate systems required.

Any person discharging or causing to be discharged into any public sewer, both sanitary sewage and industrial wastes from any building or premises, may be required to install separate drainage systems for the sanitary sewage and industrial waste. The control manhole required under section 26-32 of this chapter shall be installed in the industrial waste system; or where two (2) separate systems are required, the two (2) systems may be joined in the control manhole, provided that samples from each system can be separately obtained. (Ord. of 9-19-77)

Sec. 26-34. Testing of waters and wastes.

(a) All measurements, tests and analysis of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with 40 C.F.R. Part 136 and shall be determined at the control manhole provided for under section 26-32 of this chapter, or from suitable samples taken from such manhole.

(b) All sampling and testing shall be carried out by a qualified person(s), and the method and sampling and quality of testing done is subject to approval of the city engineer. Any users of public sewers discharging or causing to be discharged into such public sewers any industrial wastes shall provide the city engineer with samples, when requested, from the user's control manhole.

(c) All such sampling and testing shall be at the expense of the owner or his agent. (Ord. of 9-19-77)

Sec. 26-35. Special agreements.

None of the provisions of this chapter shall be construed as preventing or prohibiting any special agreement or arrangement, if approved by the sewer commission and the city council, between the city and any sewer user whereby an industrial or process water or waste of unusual strength or character may be accepted by the city in public sewers for treatment, subject to the terms of the special agreements, and payment of the cost thereof by such user; provided that such

agreements do not contravene any requirements of existing federal laws and are compatible with any user charge and industrial cost recovery system in effect.

The city may grant a variance to an industrial user discharging into the sewer system when the industrial user provides sufficient historical documentation to support such request. The Control Authority must determine that allowing such a variance will not:

- (a) result in an increase of the Maximum Allowable Industrial Headworks Loading;
- (b) result in a non-permitted discharge from the POTW;
- (c) adversely affect the treatment of wastewater;
- (d) adversely impact the sanitary sewer system;
- (e) be in violation of any applicable local, state or federal law or regulation.

Should such variances be authorized, any industrial user receiving the variance will impact the total available loadings to other industrial facilities within the treatment system.

The Control Authority will be required to assess the effectiveness of any variances. Modifications to local, state or federal requirements or wastewater characteristic changes within the wastewater system would also require the reevaluation of any variances. (Ord. of 9-19-77; Ord. of 5-15-06)

Sec. 26-36. Exclusion of industrial wastes.

Whenever it appears that the treatment plant operation is being adversely affected by an unusual discharge which cannot be readily traced by other means, the city engineer, with the approval of the mayor, shall have authority to temporarily exclude any industrial or commercial waste, whether pretreated or not, from the public sewer system, if he has reasonable cause to believe that the said industrial or commercial waste is responsible for the adverse effect upon the treatment plant, for the purpose of locating the source of such discharge and of determining the effects of such wastes upon the sewers, wastewater treatment works and/or the wastewater treatment plants. (Ord. of 9-19-77)

Sec. 26-37. Written notice required; when.

Forty-five (45) days' written notice shall be given to the city engineer by any person or persons proposing to:

- (a) Substantially change the volume or character of pollutants over that being discharged into the treatment system at time of enactment of this chapter.
- (b) Create a new discharge into the treatment system of pollutants from any source which would be a new source as defined in Section 306 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, if such a source were discharging pollutants elsewhere.
- (c) Create a new discharge into the treatment system of pollutants from any source which would be subject to Section 301 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, if it were discharging such pollutants elsewhere. (Ord. of 9-19-77)

Sec. 26-38. Enforcement.

Any person failing to comply with or violating any provision of this chapter shall be notified by the city engineer or his designee, stating the nature of the failure or violation and providing the user a reasonable time to permanently cease or correct all such failures or violations. Any person who shall continue any failure or violation beyond such compliance period shall be guilty of an offense and shall be subject to the general penalty provisions contained herein. Industrial users who are in noncompliance with pretreatment standards and requirements shall be assessed a civil or criminal penalty as set forth in the Master Fine Schedule attached hereto as Appendix C. The Portland Water District, as the designated regional agency responsible for wastewater treatment, is hereby authorized also to seek such penalties.

In addition, any person violating the provisions of this chapter shall be liable for any expense, loss, or damage incurred by reason of such noncompliance. The city may seek injunctive relief for the purpose of enforcing this chapter. (Ord. of 9-19-77; Ord. of 5-16-83; Ord. of 11-20-89)

Sec. 26-39. Appeal.

(a) Whenever the recipient of such notice as provided for in section 26-38 above, shall disagree as to the facts of the situation or the applicability or interpretation of this chapter, said person may file an appeal to the sewer commission within ten (10) days of the date of the written notice, and said person shall be afforded a hearing on the matter before the commission. The commission may affirm the decision of the city engineer, or by a two-thirds (2/3) vote of their membership may reverse the decision of the city engineer, and may permit exceptions to or a variance from the specific provisions of this chapter to prevent undue hardship, subject always to the rule that the commission shall give due consideration to the purposes of this chapter in promoting the public health, safety and welfare. However, the recipient of said notice shall comply with the decision of the city engineer until such decision is reversed or modified by the commission.

(b) A further right of appeal shall lie to the city council if filed within ten (10) days from the date of the hearing before the sewer commission. The city council may affirm the action of the city engineer and/or the sewer commission, or by a two-thirds (2/3) vote may reverse said action, and may permit exceptions to or a variance from the specific provisions of this chapter subject to the same limitations and conditions as above for appeal to the sewer commission. (Ord. of 9-19-77)

Sec. 26-40. Permit required; form, fee, expiration.

All dischargers of wastes other than domestic wastewater are required to obtain a permit from the city engineer. All permits and applications for permits shall be in a form determined by the city engineer. The district acting as the control authority will work with the city to issue permits. In cases where the city incurs administrative or outside professional costs in preparing such applications, the city engineer shall charge such costs directly to the applicant. The city engineer shall establish an expiration date for each permit, which date is no longer than five (3) years.

Such permits shall require compliance with all pretreatment standards and may include other requirements imposed by the city engineer. (Ord. of 5-16-83; Ord. of 5-15-06)

Secs. 26-41 – 26-45. Reserved.

Sec. 26-46. Compensation for sewer line easements.

(a) Each owner who conveys an easement for sewer line construction and maintenance shall in accordance with the Master Fee Schedule attached hereto as Appendix B.

(b) The burden of showing such greater diminution of value shall be on the individual property owner to be made at a hearing before the accounts claims, ethical standards committee of the city within thirty (30) days of the date of written notice to the owner that said easement is required. Said committee may extend this period for an additional thirty (30) days upon showing of good cause. (Ord. of 9-19-77)

Secs. 26-47 - 26-49. *Reserved.*

ARTICLE II. SEWER ASSESSMENTS

Sec. 26-50. Sewer commission to report to municipal officers.

Pursuant to the provisions of section 15-D of the Westbrook City Charter, whenever any extension to the sewerage system is completed, the sewer commission shall make a report to the municipal officers within sixty (60) days after final acceptance of the work by the city engineer. (Ord. of 3-28-77)

Sec. 26-51. Contents of the report.

The report from the sewer commission shall include a list or schedule of each property benefited by the sewer line with the owner's name and address, tax map references and recommended assessment. These figures and lists or schedules shall be accompanied by a brief explanation of the methods used to arrive at the figures and the reasons for the commission's recommendations. (Ord. of 3-28-77)

Sec. 26-52. Municipal officers to set public hearing date.

Within thirty (30) days of the receipt of the report required by section 26-50, the municipal officers shall review the recommendations of the sewer commission, determine which lots are benefited and assess against such lots such sum not exceeding such benefit as they deem just and equitable and set a date for a public hearing on such assessments. Thirty (30) days' notice of said public hearing as required by Title 30, Maine Revised Statutes Annotated, section 4451, shall be given. (Ord. of 3-28-77)

Sec. 26-53. Corrections to assessment lists.

If for any reason a person so assessed believes there is any error in the assessment made or that his lot is not benefited as assessed, he may, prior to the date of the public hearing, contact the city engineer who shall review the assessment. The city engineer may recommend to the municipal officers that they change such assessments where he determines that an error was made or that the lot is not benefited as assessed. (Ord. of 3-28-77)

Chapter 27

SEWER USER FEES, INDUSTRIAL PRETREATMENT PROGRAM REQUIREMENTS AND INDUSTRIAL COST RECOVERY

Sec. 27-1. Definitions.

All words not defined herein, or in Chapter 26, section 26-4 in this Code, shall have their normal meaning or such meaning as may be in common use in the field of sanitation and wastewater treatment.

Act. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U S C §1251 et seq. , 86 Stat 816, Pub L 92-500 and the regulations promulgated there under, as amended from time to time.

Approval Authority. State of Maine Department of Environmental Protection

Authorized Representative.

If the User is a corporation:

The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for individual wastewater discharge permit [or general permit {optional}] requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

If the User is a partnership or sole proprietorship: a general partner or proprietor, respectively.

If the User is a Federal, State, or local governmental facility: a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

The individuals described in paragraphs 1 through 3, above, may designate a Duly Authorized Representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the City.

Best Management Practices or BMPs means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in §403.5(a)(1) and (b). BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

Biochemical Oxygen Demand ("BOD"). The quantity of oxygen utilized in the biochemical oxidation of organic matter, under standard laboratory procedures in five (5) days at 20° centigrade, expressed in terms of milligrams per liter (mg/L).

Bypass. The diversion of wastewater from any portion of an Industrial User's treatment facility.

Categorical Industrial User. An Industrial User subject to National Categorical Pretreatment Standards.

Categorical standards. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307 (b) and (c) of the Act (33 U.S.C. section 1317) that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

Chemical Oxygen Demand or COD. A measure of the oxygen required to oxidize all compounds, both organic and inorganic, in water.

Collector Sewer. Means a sewer which transmits wastewater from one or more individual service lines to a trunk or interceptor sewer and has no other common sewers tributary to it.

Cooling Water. The water discharged from cooling devices, such as air conditioning, cooling, or refrigeration.

Control Authority refers to the City of Westbrook or Portland Water District.

DEP. The Maine Department of Environmental Protection

Daily Maximum. The arithmetic average of all effluent samples for a pollutant collected during a calendar day.

Daily Maximum Limit. The maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of the day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measurement of the pollutant concentration derived from all measurements taken that day.

Direct Discharge. The discharge of treated or untreated wastewater directly to the Waters of the State.

Domestic Source. Any residence, building, structure, facility, or installation from which only sanitary sewage will normally be discharged to the Facility.

Existing Source. Any source of discharge that is not a “New Source.”

Facility. See POTW - Publicly Owned Treatment Works.

Garbage. Solid wastes from the domestic and commercial preparation, cooking, and dispensing of food and produce, and from the handling, storage and sale of food and produce.

Grab Sample. A sample that is taken from a wastestream without regard to the flow in the wastestream and over a period of time not to exceed fifteen (15) minutes.

Hauler. Persons, firms, or corporations transporting wastewater, septage, holding water, or Industrial Waste to the City’s POTW for disposal.

Holding Tank Waste. Any waste derived from the temporary storage of sanitary waste including those derived from sinks and sanitary plumbing fixtures. Holding Tank Wastes are expected to exhibit pollutant concentrations similar to that of typical domestic wastewater.

Indirect Discharge or "Discharge". The discharge or the introduction into the Facility of pollutants from any source, other than a Domestic Source, regulated under section 307(b), (c) or (d) of the Act.

Industrial User. A source of Indirect Discharge or any source which discharges Industrial Waste to the Facility.

Industrial Waste. Any liquid, gaseous, or solid waste substance, or a combination thereof, resulting from any process of industry, manufacturing, trade, or business or from the development or recovery of any natural resources.

Interference. A discharge which, alone or in conjunction with discharges from other sources which inhibit or disrupt the Facility, its treatment processes or operations, or its sludge processes, use or disposal, and which is a cause of a violation of any requirement of the District's MePDES Permit (including an increase in the magnitude or duration of a violation), or of the prevention of sewage sludge use or disposal by the Facility in accordance with applicable federal, state, or local statutes and regulations or permits issued there under, as set forth in 40 C F R §403 3(i).

Local Limit. Specific discharge limits developed and enforced by the City upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b).

MePDES Maine Pollution Discharge Elimination System or permit issued by the State of Maine for discharges from a wastewater treatment facility.

Medical Waste. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

mg/L milligrams per liter

Monthly Average. The sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

Monthly Average Limit. The highest allowable average of “daily discharges” over a calendar month, calculated as the sum of all “daily discharges” measured during a calendar month divided by the number of “daily discharges” measured during that month.

Municipal Sewer or Collector System. A sewer or system of sewers directly controlled by or which is the responsibility of the Municipality.

NAICS. The North American Industry Classification System. A system of classifying industries by the nature of their process. Replaced the Standard Industrial Classification system.

(National) Categorical Pretreatment Standard. Any regulation containing pollutant discharge limits promulgated by EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. section 1317) that apply to a specific category of Users and that appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

New Source. Any building, structure, facility, or installation from which there is (or may be) a discharge of pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under section 307(c) of the Act that will be applicable to such source if such Standards are thereafter promulgated in accordance with that section, provided that:

- a. The building, structure, facility, or installation is constructed at a site at which no other source is located; or
- b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an Existing Source; or
- c. The production or wastewater generating processes of the building, structure, facility, or installation are substantially independent of an Existing Source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the Existing Source, should be considered.

- d. Construction on a site at which an Existing Source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility, or installation meeting the criteria of (b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.
- e. Construction of a New Source as defined under this paragraph has commenced if the owner or operator has:
- f. Begun, or caused to begin, as part of a continuous onsite construction program
- g. any placement, assembly, or installation of facilities or equipment; or
- h. significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
- i. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

Noncontact Cooling Water. Water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product, or finished product.

Non-Categorical Significant Industry. An industry which meets the definition of a Significant Industrial User, but is not a categorical industry.

Non-Significant Industry. An industry which does not meet the definition of a Significant Industrial User, but is permitted by the City because it has a possibility of discharging incompatible pollutants in excess of local discharge limits or is required to have a spill control plan.

Pass Through. The discharge of pollutants through the Facility into Waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of violation of any requirement of the District's NPDES Permit (including an increase in the magnitude or duration of a violation).

Person. Any individual, firm, company, association, corporation, trust or government authority partnership, public or private corporation or authority, association, trust, estate, governmental entity, agency or political subdivision of a municipality, the State of Maine, or the United States, or any other legal entity, or

their legal representative, agent, or assign. The masculine gender shall include the feminine, and the singular shall include the plural where indicated by the context.

pH. A measure of the acidity or alkalinity of a solution, expressed in standard units.

Pollutant Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, in whatever form and whether originating at a point or non-point source, which is or may be discharged, drained, or otherwise introduced into the Facility, environment or Waters of the State.

These may be but are not limited to: Dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, Medical Wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes, and certain characteristics of wastewater (e.g., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

Pollution. The man-made or man induced alteration of the chemical, physical, biological or radiological integrity of water.

POTW Publicly Owned Treatment Works ("Facility"). The treatment works, as defined by Section 212 of the Act, operated by the City. This definition includes any devices and systems used in the storage, treatment, recycling, disposal, and reclamation of wastewater and sewage consisting of domestic, commercial, municipal, and industrial wastes of a liquid nature. It also includes those sewers, pipes, and other conveyances which convey wastewater to the Facility. For the purposes of these Rules and Regulations, POTW shall also include any sewers that convey wastewaters to the treatment works from Persons who are, by permit, contract, or agreement with the City, Users of the Facility.

POTW Treatment Plant. That portion of the Facility designed to provide treatment (including recycling and reclamation) of wastewater, municipal sewage, industrial waste, septage and holding water.

Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into the Facility. The reduction or alteration can be obtained by physical, chemical or biological processes, process changes, or other means, except as prohibited by 40 C F R §403.6(d).

Pretreatment Requirements. Any substantive or procedural requirement related to pretreatment, other than a National Categorical Pretreatment Standard, imposed on a User by the District through its permit process as defined in 4.1 of these Rules and Regulations.

Pretreatment Standards or Standards. Pretreatment Standards shall mean prohibited discharge standards, categorical Pretreatment Standards, and Local Limits.

R C R A Resource Conservation and Recovery Act

Sanitary Sewage. Liquid and water-carried human and domestic wastes from residences, commercial buildings, industrial plants and institutions, exclusive of ground, storm and surface water and exclusive of industrial wastes.

Sanitary Sewer. A sewer that carries liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm, and surface waters that are not admitted intentionally.

Septage. Any waste, refuse, effluent, sludge or other material derived from a septic tank, cesspool, vault privy, or similar source which concentrates wastes or to which chemical have been added. Per this definition, portables are considered to be septage.

Septic Tank Pumpage "Septage". Any solid or liquid wastes removed from septic tanks, cesspools, seepage pits, grease traps or privies.

Service Agreement. A contract between the City and a Person, as defined in [ag] above for the handling and treatment of wastewater from such Person.

Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.).

Sewer. A pipe or conduit that carries wastewater.

Sewerage system. Any device, equipment, or works used in the transportation, pumping, storage, treatment recycling, reclamation, and disposal of sewage and industrial wastes.

Shall is mandatory; May is permissive.

Significant Industrial User. Except as provided in paragraph (3) of this Section, a Significant Industrial User is:

1. An Industrial User subject to categorical Pretreatment Standards;
or
2. An Industrial User that:

Discharges an average of twenty-five thousand (25,000) gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater);
Contributes a process wastestream which makes up five (5) percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or
Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the POTW's

operation or for violating any Pretreatment Standard or Requirement.

3. Upon a finding that a User meeting the criteria in Subsection (2) of this part has no reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standard or Requirement, the City may at any time, on its own initiative or in response to a petition received from an Industrial User, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such User should not be considered a Significant Industrial User.

Significant Noncompliance means :

Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six- (6-) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement,;

Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six- (6-) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement Limits, multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

Any other violation of a Pretreatment Standard or Requirement that the City determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;

Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the District's exercise of its emergency authority to halt or prevent such a discharge;

Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

Failure to accurately report noncompliance; or

Any other violation(s), which may include a violation of Best Management Practices, which the City determines will adversely affect the operation or implementation of the local pretreatment program.

Sludge (Biosolids). Waste containing varying amounts of solid contaminants removed from water, sanitary sewage, wastewater or industrial wastes by physical, chemical and biological treatment.

Slug Load or Slug Discharge. Any discharge at a flow rate or concentration, which could cause a violation of the prohibited discharge standards of these rules. A Slug Discharge is any Discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch Discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the POTW's regulations, Local Limits or Permit conditions.,

Solids Disposal Operations. The method or methods the City employs to utilize or dispose of the by-product solids sludge resulting from the treatment of wastewater.

Staff. The staff of the City of Westbrook.

Storm Water. Any flow occurring during or following any form of natural precipitation, and resulting there from.

Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.

Toxic Pollutant. Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the Administrator of the Environmental Protection Agency under section 307(a)(1) of the Act, or other statutes, regulations or ordinances.

User. Any Domestic Source or Industrial User which discharges wastewater to the Facility.

Vehicle Registration. Document issued by the District to Haulers for a specified vehicle. A certificate of liability insurance must be submitted and payment of fee made prior to issuance or approval of registration.

Wastewater, The liquid and water-carried industrial, non-domestic or domestic wastes, including sewage, industrial waste, other wastes, or any combination thereof, from dwellings or facilities.

Wastewater Discharge Permit or Permit. The document issued by the City as set forth in Section 4.1 of these Regulations.

Wastewater Treatment Plant or Treatment Plant. That portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

Waters of the State. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, border upon or are within the jurisdiction of the State of Maine.

Other Waste. Any waste delivered by truck that does not satisfy the definition of Septage or Holding Tank Wastes. Other Wastes may include commercial wastes that include materials other than sanitary wastes.

(Ord. of 4-5-10)

Sec. 27-2. Sewer user charges.

(a) The city council, after receiving the recommendations of the sewer commission, shall establish a schedule of fees or charges to be levied against all sewer users to meet the costs of collection and treatment of sewage and the costs of operation and maintenance of the wastewater treatment works.

(b) The sewer user fee schedule shall be on file with the city clerk and the city engineer.

(c) (1) The charge shall be based on the amount of water, estimated or measured, as shown on the records of the Portland Water District, provided to the sewer user during the previous billing period; provided, however, that where water is obtained from a source or sources other than the Portland Water District, whether or not Portland Water District also supplies water, the computation shall include the amount of water obtained from all such other sources, unless the user establishes to the satisfaction of the city engineer that the water from such other sources is not entering the sewer system. The city engineer may require additional metering, either of water sources or of the sewer outflow, to be installed and maintained at the owner's expense where, in his opinion, such metering is required to accurately measure the volume of wastewater entering the sewer system. Alternatively, industrial laundry facilities may choose to accept a ten (10) percent credit of the wastewater charges for evaporation loss provided an inspection of the facility is performed by the City Engineer. (Ord. of 4-5-10)

(2) There shall be a ready-to-serve charge equal to the minimum sewer user fee as provided in subsection (d) for those users who have not connected to the public sewer system. The payment of such charge in no way affects the obligation of the owner of such property to connect to the public sewer system in conformance with this Article. These funds can be used only for payment of debt service.

(d) Each sewer user shall pay a minimum sewer user service fee regardless of actual water usage. Such minimum fee shall be based on a minimum of one thousand (1,000) cubic feet of water per month. (Ord. of 9-19-77; Ord. of 5-15-06; 7-6-09; 4-5-10)

Sec. 27-3. Industrial surcharges.

The city council, after receiving the recommendations of the city engineer and the sewer commission, may establish a schedule of industrial surcharges to cover the added cost of handling and treating any of the wastes enumerated in sections 26-29 and 26-30 or Chapter 27 Article III, Schedule A of this Code. (Ord. of 9-19-77; Ord. of 5-15-06)

Sec. 27-4. Industrial cost recovery.

(a) All persons discharging industrial wastes or commercial wastes which average one thousand (1,000) or more gallons per day, shall be subject to industrial cost recovery under this section, as required by federal law, in addition to sewer user fees and any industrial waste surcharges.

(b) The city council, after receiving the recommendations of the city engineer and the sewer commission, shall establish a schedule of charges to industrial and commercial users which shall be based upon the volume of wastes and the quantity of B.O.D. and suspended solids contained in the wastes to insure that each such user pays its proportionate share of the cost of the treatment works allocable to such industrial and commercial users. (Ord. of 9-19-77)

Sec. 27-5. Billing and collections.

(a) Bills shall be rendered at the close of each billing period and shall include a statement of the volume of water usage and other applicable information.

(b) Bills shall be due and payable upon receipt. Interest at the same rate as that established for unpaid property taxes shall be added to all unpaid bills beginning thirty (30) days after the date of the bill.

(c) In accordance with the provision of section 15-F of the Charter, there shall be a lien on the property served, or to which service is available, to secure payment of the charges and fees established herein, which shall take precedence over all other claims on such real estate, excepting only claims for taxes. In addition, the city solicitor and/or city treasurer is hereby authorized to enforce collection of delinquent charges and fees as established herein by any method provided under the general laws of the state for the collection of charges and assessments for public sewers by a special tax assessment, and to maintain a civil action for the collection of same as provided in section 15-G of the Charter.

(d) Nothing contained in this chapter shall in any way limit the city's authority to contract with the Portland Water District for the billing and collection of the charges and fees established herein, or to contract with individual sewer users pursuant to section 26-35 of this Code. (Ord. of 9-19-77)

Sec. 27-6. Review of user charges.

(a) Any person aggrieved by the imposition of any charge authorized by this chapter may petition the city engineer in writing for a review of such charges. Such application must be filed at the engineering department within thirty (30) days of the charge sought to be reviewed and shall state all of the reasons for the review.

(b) The city engineer may review and adjust such user charges as he deems appropriate within the intent of this chapter and Chapter 26 of the Code. He shall modify such charges only after the petitioner has shown through affirmative proof that:

- (1) The volume of water consumed exceeds the volume of sewage generated by the unit;

- (2) The difference between the volume of water and of sewage exceeds fifteen (15) percent of the metered water measurement;
- (3) The amount of the difference can be established to a substantial certainty by reliable tests or is documented by reliable sources prepared for purposes unconnected with sewer disposal;
- (4) Initial measurement by submeters was impossible or impracticable.

(c) As part of his application, the user shall supply his Portland Water District account number, evidence of his water consumption in hundreds of cubic feet for the most recent quarter as well as the previous three (3) quarters, and explanation of where or by whom the additional waters were used, e.g. swimming pool filling, washing cars, watering laws and an estimate of approximate usage.

(d) Abatements shall not be considered for a user under the following circumstances:

- (1) When the petition for review is of a similar nature to a previous request for a user charge adjustment.
- (2) When the application submitted does not reflect the true consumption records of the Portland Water District or is otherwise incomplete.

(e) Notwithstanding the submetering provisions of section 27-2, any sewer user who may seek a second or successive adjustment of a sewer bill shall be required first to install an additional meter to measure the volume of water which can be shown not to enter the sewerage system. The sewer user, following approval of an installation application by the city engineer, shall own, install, and maintain this metering device. The person to be charged will receive his adjusted sewer billing directly from the Portland Water District.

(f) Persons aggrieved by a misread meter reading, meter malfunction, or similar sources of user billing error shall negotiate directly with the Portland Water District whose determination shall be final. Any other person requesting an abatement of user charges not covered by this chapter may request a hearing following the procedures set forth in sections 27-7(3) and 27-7(c). (Ord. of 12-10-84)

Sec. 27-7. Appeals.

(a) Any person aggrieved by a determination made under the provisions of this chapter, or any person questioning the amount of or the validity of any charge or fee hereunder, shall first contact the city engineer who may make such adjustments as he deems appropriate and within the intent of this chapter and chapter 26 of this Code.

(b) Any person dissatisfied with the action of the city engineer may appeal in writing within ten (10) days to the sewer commission, which shall within thirty (30) days hold a hearing on the appeal. The sewer commission may affirm or amend the city engineer's action, and it may permit exceptions to or variances from the specific provisions of this chapter to prevent undue hardship. The commission may impose such conditions as it deems necessary in furtherance of the intent and purposes of this chapter, including but not limited to, a requirement for added water or sewerage flow metering and reporting.

(c) A further right of appeal shall be to the city council, which may affirm, reverse or modify the ruling of the sewer commission. Said appeal shall be filed in writing with the city clerk within ten (10) days of the sewer commission action.

(d) All such adjustments or decisions shall be given in writing and dated. (Ord. of 9-19-77)

Sec. 27-8. Sewer User Rules Purpose and Scope. (Ord. of 4-5-10)

It is the purpose of these Rules & Regulations to set forth uniform requirements for Users of the City of Westbrook Wastewater Collection & Treatment System (the System). These Rules & Regulations conform with and supplement the city sewer user ordinance, the Federal Water Pollution Control Act (33 U.S.C. § 61251 et seq.) as amended by the state statutes, and section 16 of the Portland Water District Charter.

It is the intent of these Rules & Regulations to establish requirements for compliance with the City of Westbrook's Industrial Pretreatment Program which seeks to:

1. Prevent the introduction of pollutants to the system which would interfere with its operation.
2. Prevent the introduction of pollutants to the system that will pass through, inadequately treated, into the receiving waters, or be otherwise incompatible with the system;
3. Protect both system personnel who may be affected by wastewater and sludge in the course of their employment, and the general public;
4. Promote the reuse and recycling of industrial wastewater and sludge from the system;
5. Enable the Portland Water District to comply with its Maine Pollutant Discharge Elimination System permit conditions, sludge use and disposal, and any other Federal or State laws to which the system is subject.

The provisions of these Rules and Regulations shall apply to all users of the system and govern the types of wastes and wastewaters allowed in the system, and control the quantity and characteristics of wastes and wastewaters received by the system. (Ord. of 9-19-77; Ord. of 5-15-06)

Sec. 27-9. General Discharge Prohibitions.

No person may introduce into a POTW any pollutant(s) which may cause pass through or interference. These general prohibitions and the specific prohibitions in Chapter 26 of these Rules and Regulations apply to each person introducing pollutants into the facility whether or not the person is subject to other National Pretreatment Standards or any national, state, or local Pretreatment Requirements. (Ord. of 5-15-06)

Sec. 27-10. Specific Discharge Prohibitions.

In addition to the Prohibitions described in Section 3.1 above, the following discharges to the Facility are specifically prohibited:

- (a) Any gasoline, benzene, naphtha, fuel, oil, or other flammable or explosive liquid, solid, or gas, or any other pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, waste streams with a closed-cup flashpoint of less than 140 degrees F (60 degrees C) using the test methods specified in 40 CFR 261.21;
- (b) Any wastewater containing toxic objectionable pollutants in sufficient quantity or concentration, either singly or by interaction with other pollutants, to

injure or interfere with any wastewater treatment process, to constitute a hazard to humans or animals, to create a toxic effect in the receiving waters of the Facility, or to exceed the limitations set forth in a National Categorical Pretreatment Standard found in 40CFR Chapter I, Subchapter N, Parts 405-471, the Local Discharge Limitations prescribed herein in Section 3.5, or a Wastewater Discharge Permit issued pursuant to these Rules and Regulations. A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to Section 307(a) of the Act and as listed at 40 C F R Part 403, App B.

(c) Also, prohibited are any wastewaters which may cause corrosive structural damage to the Facility **including, but not limited to** the following characteristics:

All wastewaters with a pH lower than 5.0 or greater than 10.3 **

**(The City may authorize discharge of wastes with a pH greater than 10.3 provided that the caustic (hydroxide) alkalinity of the sample does not exceed 1000 mg/l.)

(d) Any wastes or wastewaters having solid or viscous material which could cause an obstruction to flow in the Facility or in any way could interfere with the treatment process, including as examples of such materials, but without limiting the generality of the foregoing, significant proportions of ashes, wax, paraffin, cinders, sand, mud, straw, shavings, metal, glass, rags, lint, feathers, tars, plastics, wood and sawdust, hair and fleshings, entrails, lime slurries, beer and distillery slops, grain processing wastes, grinding compounds, acetylene generation sludge, chemical residues, acid residues, food processing bulk solids, snow, ice, and whole or ground seafood shells, whole blood, unground garbage, paper dishes, cups, whole or ground milk containers, and all other solid objects, material, refuse, and debris not normally contained in sanitary sewage.

(e) Any waste which, either singly or by interaction with other wastes may result in the presence of noxious or malodorous liquids, gases, vapors, fumes or solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life, or to prevent entry into the sewers for maintenance or repair;

(f) Any substance which may cause the Facility's effluent or any other product of the Facility such as biosolids, sludges, or scums, to be unsuitable for disposal in a permitted landfill or for reclamation and reuse, or to interfere with the reclamation and reuse process. In no case shall a substance discharged to the Facility cause the Facility to be in noncompliance with sludge use or disposal criteria, guidelines, or regulations developed under Section 405 of the Act; or with any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, or Maine D E P "Rules for Agronomic Utilization of Residuals – MRSA Title 38, Section 1304, Chapter 419.

(g) Any pollutants, including oxygen demanding pollutants (BOD, etc.) released in a discharge at a flow rate and/or pollutant concentration which, either singly or by

interaction with other pollutants, will cause Interference to the Facility or Pass Through to the Waters of the State.

(h) Any wastewater load (slug) having a flow rate or containing concentrations or quantities of pollutants that exceed for any time period longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration, quantities, or flow during normal operation.

(g) Any wastewaters with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.

(h) Any wastewater having a temperature which may inhibit biological activity in the Facility resulting in interference, but in no case wastewater which causes the temperature at the introduction to the treatment plant to exceed 40 degrees Centigrade (104 degrees Fahrenheit).

(i) Any wastewater containing any radioactive wastes or isotopes with such half-life or concentration as may exceed limits necessary to comply with applicable state or federal regulation.

(j) Any sludges or deposited solids resulting from an industrial pretreatment process.

(k) Any petroleum oil, non-biodegradable cutting oil or products of mineral oil origin in amounts that will cause Interference or Pass Through.

(l) Any pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;

(m) Any medical wastes, except as specifically authorized by the District in an individual wastewater discharge permit.

(n) Any wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail toxicity test.

(o) Any detergents, surface-active agents, or other substances which that might cause excessive foaming in the POTW.

(p) Any trucked or hauled pollutants, except at discharge points designated by the District in accordance with Section 7 of these rules.

(q) Any pollutants, substances, or wastewater prohibited by this Section shall not be processed or stored in such a manner that they could be discharged to the POTW.

(Ord. of 5-15-06; 4-5-10)

Sec. 27-11. National Categorical Pretreatment Standards.

Upon the promulgation of National Categorical Pretreatment Standards for a particular industrial subcategory found in 40 C.F.R., Chapter I, Subchapter N, Parts 405-471 and hereby incorporated in these Rules and Regulations, shall immediately supersede, for Users in that subcategory, the limitations imposed under these Rules and Regulations. The city shall notify all affected users of the applicable requirements under the Act; and subtitles C and D of the Resource Conservation and Recovery Act. (Ord. of 5-15-06)

Sec. 27-12. Modification of National Categorical Pretreatment Standards.

Pursuant to 40 C.F.R. § 403.7, where the facility achieves consistent removal of pollutants limited by a National Categorical Pretreatment Standard, the city may apply to the EPA for modification of the discharge limits for a specific pollutant covered in the relevant National Categorical Pretreatment Standards in order to reflect the facility's ability to remove said pollutant. The city may modify pollutant discharge limits contained in a National Categorical Pretreatment Standard only if the requirements of 40 C.F.R. § 403.7 are fulfilled and prior written approval from the EPA is obtained.

The City may develop Best Management Practices by rule for individual wastewater discharge permits to implement Local Limits and the requirements of Section 27-10.

Sec. 27-13. Local Discharge Limitations.

No person shall discharge wastewater containing any pollutant specified in Schedule A annexed hereto and incorporated herein by reference, in excess of the limitations for each of said pollutants as specified in said Schedule A (Westbrook POTW discharge limitations). Compliance with the provisions of this shall be assessed on the basis of samples of the person's wastewater discharge collected at each point of connection between the person's building, structure, facility or installation and the facility. If a National Categorical Pretreatment Standard found in 40 C.F.R., Chapter I, Subchapter N, Parts 405-471 and hereby incorporated in these rules and regulations establishes limitations for Users in a particular industrial subcategory which are more stringent than the limitations for Users in a particular industrial subcategory which are more stringent than the limitations specified in Schedule A, those more stringent limitations shall immediately apply to those Users subject to that National Categorical Pretreatment Standard. Compliance with National Categorical Pretreatment Standard limitations shall be determined in accordance with the requirements set forth at 40 C.F.R. § 403.12(b)(5). (Ord. of 5-15-06; 4-5-10)

Sec. 27-14. State requirements.

Users must comply with State Pretreatment Standards codified at 06-096 CMR Chapter 528 Pretreatment Program. (Ord. of 5-15-06; 4-5-10)

Sec. 27-15. Right of revision.

The city and or the district reserves the right to establish by amendment to these Rules and Regulations more stringent limitations or requirements on discharges to the facility if deemed necessary to comply with the objectives presented in Section 27-8 of these rules and regulations or as may be imposed by federal or state authorities. (Ord. of 5-15-06)

Sec. 27-16. Dilution prohibited in absence of treatment.

Except where expressly authorized to do so by an applicable National Categorical Pretreatment Standard or Pretreatment Requirement, no user shall ever increase the use of process water or in any other way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance either with the limitations contained in any

National Categorical Pretreatment Standard or Pretreatment Requirement, or in any other pollutant-specific discharge limitation developed by the City or the EPA. (Ord. of 5-15-06)

Sec. 27-17. Pretreatment.

Each user shall provide necessary wastewater treatment as required to comply with these rules and regulations, including the Local Discharge Limitations set forth in Schedule A hereto, and shall achieve compliance with all applicable National Categorical Pretreatment Standards within the time limitations specified by said Standards. Any facilities required to pretreat wastewater to a level which will achieve compliance with these rules and regulations shall be provided, operated and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the city for review and shall be acceptable to the city before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent which complies with the provisions of these rules and regulations or from liability for non-compliance with Pretreatment Standards or Pretreatment Requirements and these rules and regulations. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the city prior to the user's initiation of the changes.

(a) Whenever deemed necessary, the City may require Users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the POTW and determine the User's compliance with the requirements of these rules..

(b) The City may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An individual wastewater discharge permit may be issued solely for flow equalization..

(c) Grease, oil, and sand interceptors shall be provided when they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of a type and capacity approved by the City and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired by the User at their expense.

All records relating to compliance with applicable Pretreatment Standards and Pretreatment requirements as defined in 40 C.F.R. § 403.3(j) and (r) shall be made available to officials of the EPA, DEP, or city upon request. In addition, pursuant to the public participation requirements of 40 C.F.R. Part 25, the city shall annually publish in the largest daily newspaper of general circulation in the municipality in which the POTW is located, a list of users which, at any time during the preceding twelve (12) months, were in significant noncompliance with applicable pretreatment standards or pretreatment requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users (or any other Industrial User that violates paragraphs (C), (D) or (H) of this Section) and shall mean:

(a) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six- (6-) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Section 3;

(b) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six- (6-) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by Section 3 multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

(c) Any other violation of a Pretreatment Standard or Requirement as defined by Section 3 (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the District determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;

(d) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the District's exercise of its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(f) Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(g) Failure to accurately report noncompliance; or

(h) Any other violation(s), which may include a violation of Best Management Practices, which the District determines will adversely affect the operation or implementation of the local pretreatment program.

(Ord. of 5-15-06; 4-5-10)

Sec. 27-18. Accidental discharges.

(a) *Plans and procedures.* Each industrial user shall provide protection from accidental discharge of prohibited materials or other substances regulated by these rules and regulations. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the industrial user's own cost and expense. Detailed plans showing facilities and

operating procedures to provide this protection shall be submitted to the city and approved by the city.

The industrial user shall be permitted to introduce pollutants into the facility until accidental discharge procedures have been approved by the city. Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify the industrial user's facility as necessary to meet the requirements of these rules and regulations, or from any other violation of these rules and regulations.

In the case of an accidental discharge, the industrial user shall immediately notify the city of the incident. The notification shall include location of discharge, type of waste, concentration and volume, and any and all corrective actions.

(b) *Written notice.* Within five (5) days following an accidental discharge, the industrial user shall submit to the city a detailed written report describing the cause of the discharge and the measures which have been and shall be taken by the user to prevent similar future occurrences. Such notification shall not relieve the industrial user of any expense, loss, damage, or other liability which may be incurred as result of damage to the facility, fish kills, or any other damage to person, animals or property; nor shall such notification relieve the industrial user of any fines, civil penalties, or other liability which may be imposed by the regulations or other applicable law.

(c) *Notice to employees.* A notice shall be permanently posted on the industrial user's bulletin board or other prominent place advising employees whom to call in the event of an accidental discharge. Employers shall ensure that all employees who may cause or suffer such a discharge to occur, or who may know or have reason to know thereof, are advised of the emergency notification procedures. (Ord. of 5-15-06)

Sec. 27-19. Slug Discharge.

At least once every two years, the City shall evaluate whether each Significant Industrial User needs a plan to control slug discharges. The Significant Industrial User shall comply with the provisions of any such slug control plan which the District determines to be necessary, including but not limited to:

- (a) a description of discharge practices, including non-routine batch discharges;
- (b) a description of stored chemicals;
- (c) procedures for immediately notifying the Facility of slug discharges, including any discharge that would violate a prohibition under 40 CFR §403.5(b), with procedures for follow-up written notification; and,
- (d) procedures to prevent adverse impact from any accidental or Slug Discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response. (Ord. of 5-15-06; 4-5-10)

Sec. 27.20. Reports of potential problems.

- (a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, a Slug Discharge or Slug Load, that might cause potential problems for the POTW, the User shall immediately telephone and notify the City of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the User.
- (b) Within five (5) days following such discharge, the User shall, unless waived by the District, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed pursuant to these rules.
- (c) A notice shall be permanently posted on the User's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph A, above. Employers shall ensure that all employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.
- (d) Significant Industrial Users are required to notify the City immediately of any changes at its facility affecting the potential for a Slug Discharge.

(Ord. of 4-5-10)

Sec. 27-21. Permit requirements.

(a) It shall be unlawful for any Significant Industrial User to discharge wastewater directly or indirectly into the facility without first obtaining a Wastewater Discharge Permit from the City, except that a Significant Industrial User that has filed a timely application pursuant to Sec. 27-22 of these rules may continue to discharge for the time period specified therein. Any violation of the terms and conditions of the Permit shall be deemed a violation of these rules and regulations. Obtaining a permit does not relieve the Significant Industrial User of its obligation to obtain other permits required by federal, state or local law.

(b) The City may require that any industrial user, including Haulers, obtain a permit as necessary to carry out the purpose of these rules and regulations.

(c) New industrial users located beyond the city's wastewater service area shall submit a permit application, in accordance with Section 29-22 below, to the city sixty (60) days prior to discharging into the sewer collection system. Upon review and approval of such application, the City may enter into a contract with the user which requires the user to subject itself to an abide by these rules and regulations, including all permitting, compliance monitoring, reporting, and enforcement provisions herein.

(d) Any Significant Industrial User proposing to begin or recommence discharging non-domestic wastes into the facility must obtain a permit prior to beginning or recommencing such

discharge. An application for this permit must be filed at least sixty (60) days prior to the anticipated start-up date. (Ord. of 5-15-06; 4-5-10)

Sec. 27-22. Permit application.

In order to be considered for a permit, all industrial users require to have a permit must submit the following information on an application form provided by the city.

- (a) Name, address and location (if different from address);
- (b) Standard Industrial Classification (SIC) code of both the industry as a whole and any processes for which National Categorical Standards have been promulgated;
- (c) Wastewater constituents and characteristics including any pollutants in the discharge which are limited by any federal, state or local standards. Sampling and analysis will be undertaken in accordance with 40 C.F.R. Part 136;
- (d) Time and duration of the discharge;
- (e) Daily maximum, daily average, and monthly average wastewater flow rates identified separately by regulated discharge streams, including daily, monthly and seasonal variations, if any;
- (f) Description of activities, facilities and plant processes on the premises, including a list of all raw material and chemicals used at the facility which are or could accidentally or intentionally be discharged;
- (g) The site plans, floor plans, mechanical plans, plumbing plans, and details to show all sewers, floor drains and appurtenances by size, location and elevation;
- (h) Each product produced by type, amount, process or processes and rate of production where production based National Categorical Standards may apply
- (i) Type and amount of raw materials processed (average and maximum per day) where production based National Categorical Standards may apply;
- (j) Number and type of employees and hours of operation, and proposed or actual hours of operation of the pretreatment system;
- (k) Whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the industrial user to meet all applicable federal, state or local standards. If additional pretreatment and/or O&M will be required to meet the standards, then the industrial user shall indicate the shortest time schedule necessary to accomplish installation or adoption of such additional treatment and/or O&M. The completion date in this schedule shall not be longer that the compliance date established for the applicable pretreatment standard. The following conditions apply to this schedule:
 - (i) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the industrial user to meet the applicable pretreatment standard (such events include hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, beginning operation and conducting routine operation). No increment referred to in (11) above shall exceed nine (9) months, nor shall the total compliance period exceed eighteen (18) months.

(ii) No later than fourteen (14) days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the city including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the city;

(l) A list of any environmental control permits held by or for the facility;

(m) The location(s) for monitoring all waste streams covered by the permit;

(n) Any other information as may be deemed by the city to be necessary to evaluate the permit application.

(Ord. of 5-15-06; 4-5-10)

Sec. 27-23. Certification statement.

The following certification statement is required to be signed and submitted by Users submitting permit applications in accordance with Section 4.2; Users submitting baseline monitoring reports under 40 CFR 403.12 (l)] Users submitting reports on compliance with the categorical Pretreatment Standard deadlines under 40 CFR 403.12(d)]; Users submitting periodic compliance reports required by 40 CFR 403.12(e) and (h)], and Users submitting an initial request to forego sampling of a pollutant on the basis of 40 CFR 403.12(e)(2)(iii). The following certification statement must be signed by an Authorized Representative as defined in Section 1.4 :

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations ".

Users that have an approved monitoring waiver based on Section 5.2 B must certify on each report with the following statement that there has been no increase in the pollutant in its waste stream due to activities of the User.

Based on my inquiry of the person or persons directly responsible for managing compliance with the Pretreatment Standard for 40 CFR [specify applicable National Pretreatment Standard part(s)], I certify that, to the best of my knowledge and belief, there has been no increase in the level of [list pollutant(s)] in the wastewaters due to the activities at the facility since filing of the last periodic report under the rules.

Application Signatories and Certifications

(a) All wastewater discharge permit applications, User reports and certification statements must be signed by an Authorized Representative of the User and contain the certification statement in Section 4.3.

(b) If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization satisfying the requirements of this Section must be submitted to the City prior to or together with any reports to be signed by an Authorized Representative.(Ord. of 5-15-06; 4-5-10)

Sec. 27-24. Wastewater Discharge Permit approval.

The City will evaluate the data furnished by the Industrial User. The City may require additional information. Within [forty five (45)] days of receipt of a complete permit application, the City will determine whether to issue an individual wastewater discharge permit. The City may deny any application for an individual wastewater discharge permit and may require additional information. After evaluation of the data furnished, the City may issue a Permit subject to terms and conditions provided herein. (Ord. of 5-15-06; 4-5-10)

Sec. 27-25. Wastewater Discharge Permit contents.

Industrial discharge permits shall include such conditions as are reasonably deemed necessary by the city to prevent pass through or interference, protect the quality of the water body receiving the treatment plant effluent, protect worker health and safety, facilitate treatment plant sludge management and disposal, protect ambient air quality, and protect against damage to the facility. Permits may contain, but need not be limited to, the following:

- (1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
- (2) Limits on the average and/or maximum concentration mass, or other measure of identified wastewater constituents or properties, including those determined in accordance with the limits specified in Schedule A;
- (3) Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc. designed to reduce, eliminate or prevent the introduction of pollutants into the facility;
- (4) Development and implementation of spill control plans of other special conditions including additional management practices necessary to adequately prevent accidental discharges;
- (5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the facility;
- (6) Requirements for installation and maintenance of inspection and sampling;

- (7) Specifications for monitoring programs which may include sampling locations, frequency of sampling, number, types, and standards for tests, and reporting schedules;
- (8) Compliance schedules (but in no event may a compliance deadline in a permit be later than a National Categorical Pretreatment compliance deadline);
- (9) Requirements for submission of technical reports or discharge reports;
- (10) Requirements for maintaining and retaining plant records relating to wastewater discharge as specified by the city and affording the city access thereto;
- (11) Requirements for notification of any new introduction of wastewater constituents or of any substantial change in the volume or character of the wastewater being introduced into the facility;
- (12) Requirements for the notification of any change in the manufacturing and/or pretreatment process used by the industrial user;
- (13) Requirements for notification of excessive, accidental, or slug discharges;
- (14) Other conditions as deemed appropriate by the city to ensure compliance with these rules and regulations, and state and federal laws, rules, and regulations;
- (15) A statement that compliance with the permit does not relieve the industrial user of responsibility for compliance with all applicable federal pretreatment standards, including those which become effective during the term of the permit;
- (16) A statement of permit duration in accordance with Section 27-25 hereof;
- (17) A statement of permit transferability in accordance with Section 27-27 hereof;
- (18) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule, in accordance with Section 6 hereof.

(Ord. of 5-15-06; 4-5-10)

Sec. 27-26. Permit issuance process.

(a) *Permit duration.* Permits shall be issued for a specified time period, not to exceed three (3) years at the discretion of the city. A permit may be issued by the City for less than three (3) years.

(b) *Public notification.* The City will publish (in an official government publication and/or newspaper(s) of general circulation that provides meaningful public notice with the jurisdiction(s) served by the POTW, or on a Web page), a notice to issue a pretreatment permit, at least (45) days prior to issuance. The notice will indicate a location where the draft permit may be reviewed and an address where written comments may be submitted.

(c) *Permit appeals.* Upon receipt of the permit, the industrial user may petition to appeal the terms of the permit. Such petition shall be made in writing to the city council within ten (10) days from the receipt of the permit.

- (1) Failure to submit a timely petition for review shall be deemed to be a waiver of the appeal.

- (2) In its petition, the appealing party must indicate the permit provisions object to, the reasons for this objection, and the alternative condition, if any, it seeks to be placed in the permit.
- (3) The effectiveness of the permit shall not be stayed pending a reconsideration by the city. If, after considering the petition and any arguments put forth by the district, the city determines that reconsideration is proper, it shall remand the permit back to the district for reissuance. Those permit provisions being reconsidered by the city shall be stayed pending reissuance.
- (4) The city's decision not to reconsider a final permit shall be considered final administrative action for purpose of judicial review.
- (5) Aggrieved parties seeking judicial review of the final district action must do so by filing a complaint with the Superior Court for Cumberland County within thirty (30) days of the city's decision.

(Ord. of 5-15-06; 4-5-10)

Sec. 27-27. Permit modification.

The city may modify the permit for good cause including, but not limited to, the following:

- (a) To incorporate any new or revised federal, state, or local pretreatment standards or requirements;
- (b) Material or substantial alterations or additions to the industrial user's operation processes, or discharge volume or character which were not considered in drafting the original permit;
- (c) A change in any condition in either the industrial user's operation processes, or discharge volume or other character which were not considered in drafting the original permit;
- (d) Information indicating that the permitted discharge poses a threat to the facility, treatment plant, personnel or the receiving waters;
- (e) Violation of any terms or conditions of the permit;
- (f) Misrepresentation or failure to disclose fully all relevant facts in the permit application or in any required reporting;
- (g) Revision of or a grant of variance from National Categorical Standards pursuant to 40 C.F.R. § 403.23;
- (h) To correct typographical or other errors in the permit;
- (i) To reflect transfer of the facility ownership and/or operation to a new user; or
- (j) Upon a written request of the industrial user, provided such request does not create a violation of any applicable requirements, standards, laws or rules and regulations.

The filing of a request by the industrial user for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition. (Ord. of 5-15-06; 4-5-10)

Sec. 27-28. Permit transfer.

Permits may be reassigned or transferred to a new owner and/or operation whether by merger, sale of assets or otherwise, with prior written approval of the city with the following stipulations:

- (a) The industrial user must give at least forty five (45) days advance notice of the proposed transfer to the city;
- (b) The notice must include a written certification by the new owner which:
 - (1) States that the new owner has no immediate intent to change the facility's operations and processes;
 - (2) Identifies the specific date on which the transfer is to occur;
 - (3) Acknowledges full responsibility for complying with the existing permit;
 - (4) Describes the new user, and gives the same information about the user as prescribed in 27-22. (Ord. of 5-15-06; 4-5-10)

Sec. 27-29. Permit termination.

Permits may be terminated in accordance with the city code or ordinance for any of the following reasons:

- (a) Falsifying self-monitoring reports;
- (b) Tampering with monitoring equipment;
- (c) Refusing to allow timely access to the facility premises and records;
- (d) Failure to meet effluent limitations;
- (e) Failure to pay fines;
- (f) Failure to pay sewer charges;
- (g) Failure to meet compliance schedules;
- (h) Any pass-through or interference;
- (i) Any other activity which may threaten the facility, the city or district's employees or the public.

(Ord. of 5-15-06; 4-5-10)

Sec. 27-30. Permit reissuance.

The user shall apply for permit reissuance by submitting a complete permit application a minimum of sixty (60) days prior to the expiration of the user's existing permit. (Ord. of 5-15-06; 4-5-10)

Sec. 27-31. Continuation of expired permits.

An expired permit will continue to be effective and enforceable until the permit is reissued if:

- (a) The industrial user has submitted a complete permit application at least sixty (60) days prior to the expiration date of the industrial user's existing permit;

- (b) The failure to reissue the permit prior to expiration of the previous permit is not due to any act or failure to act on the part of the industrial user. (Ord. of 5-15-06; 4-5-10)

Sec. 27-32. Special agreements.

Nothing in these rules and regulations shall be construed as preventing any special agreement or arrangement between the city and any industrial user whereby wastewater of unusual strength or character is accepted into the facility and specially treated and subject to any payments or user charges as may be applicable or specially arranged. However, no discharge which violates these rules and regulations will be allowed under the terms of such special agreements. If, in the opinion of the city, the wastewater may have the potential to cause or result in any of the following circumstances, no such special agreement will be made:

- (a) Pass through or interference;
- (b) Threaten the facility, the city or district employees, or the public.
- (c) Other Jurisdictions (Inter-municipal Agreements)
- (d) The City may accept waste water from other areas and thus enter into an Inter-municipal Agreement. These agreements are authorized through these rules and shall follow the requirements contained within.

(Ord. of 5-15-06; 4-5-10)

Sec. 27-33. Reporting requirements.

(a) *Baseline report.* Within one hundred eighty (180) days following the effective date of a National Categorical Pretreatment Standard, an existing industrial user subject to said standard and currently discharging to or scheduled to discharge to the facility shall submit to the city a report as prescribed under 40 C.F.R. § 403.12(b), which shall include the information required under Section 27-22 (a), (b), (c), (e), (f), (k) and (l) of these regulations. This report shall be signed by an authorized representative of the user and contain the certification statement in Section 27-23 of these rules and regulations. The report shall also contain a statement certified by a qualified professional indicating whether pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance (O&M) and/or additional pretreatment is required for the industrial user to meet the pretreatment standards and requirements.

(b) At least ninety (90) days prior to commencement of discharge, New Sources and sources that become Industrial Users subsequent to the promulgation of an applicable National Categorical Standard, shall be required to submit to the City a report which contains the information required in these Rules and Regulations. Reports by New Sources shall include information on the method of pretreatment the New Source intends to use to meet applicable Pretreatment Standards. The report shall be signed by an Authorized Representatives of the User and shall contain the certification statement in Section 27-23 of these Rules and Regulations.

(c) *Compliance Certification.* A statement, reviewed by the User's Authorized Representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional operation

and maintenance (O&M) and/or additional pretreatment is required to meet the Pretreatment Standards and Requirements.

(d) *Compliance schedule progress reports.* If the report described in paragraph 27-33(a) above states that additional pretreatment and/or operation and maintenance (O&M) will be required to meet the pretreatment standards and requirements, the industrial user shall submit to the city a compliance schedule. Not later than fourteen (14) calendar days following each date in the compliance schedule and the final date for compliance, the industrial user shall submit a progress report to the city as prescribed under 40 C.F.R. § 403.12(c) in writing stating, at a minimum, whether or not the industrial user complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for the delay, and the steps being taken by the industrial user to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the city. The report shall be signed by an authorized representatives of the user and shall contain the certification statement in Section 27-23 of these rules and regulations.

(e) *Compliance deadline report.* Within ninety (90) days following the date for final compliance with an applicable pretreatment standards or requirements or, in the case of a new source, following commencement of the introduction of wastewater into the facility, any user subject to pretreatment standards or requirements shall submit to the city a report in writing prescribed under 40 C.F.R. § 403 12(d) indicating the nature and concentration of all pollutants in the discharge which are limited by pretreatment standards or requirements, and the average and maximum daily flow of the wastewater containing such pollutants. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional O&M and/or pretreatment is necessary to bring the user into compliance with the applicable pretreatment standards or requirements. This report shall be signed by an authorized representative of the user and be certified by a qualified professional. The city may require such follow-up reports as deemed necessary to monitor the actions taken by the user to come into compliance with the applicable pretreatment standards or requirements. The report shall also contain the certification statement in Section 27-23 of these rules and regulations.

(f) *Periodic continued compliance reports.* Any user subject to a pretreatment standard or requirement, after the compliance date for such pretreatment standard or requirement, or, in the case of a New Source, after commencement of the discharge into the facility, shall submit to the city during the months of June and December, unless required more frequently in the applicable pretreatment standard or requirements or by the city, a report in writing as prescribed under 40 C.F.R. § 403.12(e) containing the results of sampling and analysis of the discharge, indicating the average and maximum daily flows and nature of concentration of pollutants in the effluent which are limited by such pretreatment standard or pretreatment requirement. At the discretion of the city and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the city may agree to alter the months during which the above reports are to be submitted. The reports required under this Section 27-34 shall be signed by an authorized representative of the industrial user, and shall contain the certification described in Section 27-23 of these rules and regulations.

(g) *Significant Industries.* All Significant Industrial Users must, at a frequency determined by the City submit no less than twice per year (June and December, or on dates specified) reports indicating the nature, concentration of pollutants in the discharge which are limited by Pretreatment Standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by the City or the Pretreatment Standard necessary to determine the compliance status of the User.

(h) *Wastewater Samples.* All samples must be representative of the User's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the User to claim that a sample's results are unrepresentative of its discharge.

(i) *Non-significant industries (N-S-I).* Reporting of self-monitoring results shall be at a frequency determined by the city and designated in the N-S-I's industrial discharge permit.

(j) *Elimination or change of discharge.* The industrial user shall notify the city in writing forty-five (45) days prior to the permanent elimination of a discharge or any modifications in the waste collection, treatment and disposal facilities, changes in operation procedures, or other significant activities which alter the volume, nature or frequency of the discharge as specified in the users permit application.

(h) *Notifications of potential problems.* All industrial users shall notify the city immediately of all discharges that could cause problems to the facility, including any slug loadings by an industrial user.

(i) *Notifications of hazardous waste discharge.*

- (1) An industrial user shall notify the city, the EPA Regional Waste Management Division Director and the Director of the DEP's Division of Solid and Hazardous Waste, in writing, of any discharge into the facility of a substance which, of otherwise disposed of, would be a hazardous waste under 40 C.F.R. Part 261. Such notification shall include the name of the hazardous waste as set forth in 40 C.F.R. Part 261, or 38 M.R.S.A., § 1301, et seq., the EPA hazardous waste number, and the type of discharge (continuous, batch or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the facility, the notification shall also contain the following information to the extent such information is known and readily available to the user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste stream discharged during the calendar month, and an estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve months.

All industrial users who commence discharging after August 23, 1990 shall file the notification no later than one hundred eighty (180) days after the discharge of the listed or characteristic waste. Any notification under this Section 27-34 need be submitted only once for each hazardous waste discharged. However, all industrial users must notify the city in advance, in

accordance with Section 27-34 of these rules and regulations, of any change in their wastewater discharge . The notification requirement set forth herein does not apply to any pollutants already reported under the self-monitoring requirements set forth in Section 27-34 (a), (b), (c), (d) and (e) above. Any such notification shall in no way remove the liability of the user for any damages caused by introduction of such hazardous waste.

- (2) Industrial users are exempt from the requirements of Section 27-33 above during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 C.F.R. §§ 261.30(d) and 261.33(e). Discharge of more than fifteen kilograms of non-acute hazardous waste as specified in 40 C.F.R. §§ 261.30(d) and 261.33(e) requires a one-time notification. Subsequent months during which the industrial user discharges more than such quantities of any hazardous waste do not require additional notification.
- (3) In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste, the industrial user must notify the city, the EPA Regional Waste Management Division Director, and the Director of DEP's Division of Solid Hazardous Waste of the discharge of such substance within ninety (90) days of the effective date of such regulations.
- (4) In the case of any notification made under this Section 27-23(h), an industrial user shall certify that is has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(Ord. of 5-15-06; 4-5-10)

Sec. 27-34. Monitoring and analysis.

(a) The reports required in Section 27-32 and other reports as the city may require under these rules and regulations, shall contain the results of all sampling and analysis of the industrial user's discharge, whether or not conducted more frequently than required by the city, including the flow and the nature and concentration of pollutants contained therein which are limited by applicable pretreatment standards and requirements. The sampling and analysis may be performed by the city in lieu of the industrial user, in which event the industrial user will not be required to submit the compliance certification set forth in Section 27-22 above. In addition, where the city collects all of the information required for the report, including analytical results and flow data, the industrial user is not required to submit the report or compliance certification required therein.

If the industrial user's sampling indicates a violation, the user must notify the city within 24 hours of becoming aware of such violation. The user must also repeat the sampling and analysis to the city within thirty (30) days after becoming aware of the violation. The industrial user is not required to resample, however, if the city performs sampling at the industrial user between the time when the industrial user performs its initial sampling and the time when said user receives the results of the sampling.

The frequency of monitoring shall be prescribed in the industrial discharge permit and, for industrial users subject to National Categorical Pretreatment Standards, shall not be less frequent than prescribed in Section 27-32 or 33. All analyses shall be performed in accordance with procedures established by the EPA pursuant to section 304(h) of the Act and contained in 40 C.F.R. Part 136 and amendments thereto, or with any other test procedures approved by the EPA. Sampling shall be performed in accordance with the techniques approved by the EPA. Where 40 C.F.R. Part 136 does not include sampling or analytical techniques for the pollutants in question, sampling and analyses shall be performed using validated analytical methods or any other sampling and analytical procedures, including procedures suggested by the city or other parties, approved by the EPA.

(b) The City may authorize an Industrial User subject to a categorical Pretreatment Standard to forego sampling of a pollutant regulated by a categorical Pretreatment Standard if the Industrial User has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the Discharge, or is present only at background levels from intake water and without any increase in the pollutant due to activities of the Industrial User. [see 40 CFR 403.12(e)(2)] This authorization is subject to the following conditions:

- (1) The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical Standard and otherwise includes no process wastewater.
- (2) The monitoring waiver is valid only for the duration of the effective period of the individual wastewater discharge permit, but in no case longer than 5 years. The User must submit a new request for the waiver before the waiver can be granted for each subsequent individual wastewater discharge permit.
- (3) In making a demonstration that a pollutant is not present, the Industrial User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.
- (4) The request for a monitoring waiver must be signed in accordance with Section 27-23, and include the certification statement in Section 27-23 (40 CFR 403.6(a)(2)(ii)).
- (5) Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.
- (6) Any grant of the monitoring waiver by the [Superintendent] must be included as a condition in the User's permit. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the City for 3 years after expiration of the waiver.

- (7) Upon approval of the monitoring waiver and revision of the User's permit by the City, the Industrial User must certify on each report with the statement in Section 27-23, that there has been no increase in the pollutant in its waste stream due to activities of the Industrial User.
- (8) In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the User's operations, the User must immediately: Comply with the monitoring requirements of Section 27-25, or other more frequent monitoring requirements imposed by the City and notify the City.
- (9) This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.

(Ord. of 5-15-06; 4-5-10)

Sec. 27-35 Reports of changed conditions

Each User must notify the City of any significant changes to the User's operations or system which might alter the nature, quality, or volume of its wastewater at least [thirty (30)] days before the change.

- (a) The City may require the User to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under Section 27-25 of this ordinance.
- (b) The City may issue an individual wastewater discharge permit under Section 27-30 of these rules or modify an existing wastewater discharge permit under Section 27-27 of these rules in response to changed conditions or anticipated changed conditions.

(Ord. of 4-5-10)

Sec. 27-36 Reports of potential problems

- (a) In the case of any discharge, including, but not limited to, accidental discharges, discharges of a non-routine, episodic nature, a non-customary batch discharge, a Slug Discharge or Slug Load, that might cause potential problems for the POTW, the User shall immediately telephone and notify the City of the incident. This notification shall include the location of the discharge, type of waste, concentration and volume, if known, and corrective actions taken by the User.
- (b) Within five (5) days following such discharge, the User shall, unless waived by [the City Engineer], submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the User to prevent similar future occurrences. Such notification shall not relieve the User of any expense, loss, damage, or other liability which might be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the User of any fines, penalties, or other liability which may be imposed pursuant to this ordinance

(c) A notice shall be permanently posted on the User's bulletin board or other prominent place advising employees who to call in the event of a discharge described in paragraph A, above. Employers shall ensure that all employees, who could cause such a discharge to occur, are advised of the emergency notification procedure.

(d) Significant Industrial Users are required to notify the City immediately of any changes at its facility affecting the potential for a Slug Discharge.

(Ord. of 4-5-10)

Sec. 27-37. Record keeping requirements.

An industrial user subject to the reporting requirements shall maintain records of all information resulting from any monitoring activities required thereunder. Such records shall include, for all samples:

- (a) The date, exact place, method, and time of sampling and the names of the person or persons taking the samples;
- (b) The dates analyses were performed;
- (c) Who performed the analyses;
- (d) The analytical techniques/methods used;
- (e) The results of such analyses; and
- (f) The results of any quality control procedures which may be required by the city.

The industrial user shall keep copies of all such records and reports of monitoring activities and results for a minimum of three (3) years, and shall make such records available for inspection and copying by the EPA, DEP, and the city with or without notice. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the industrial user or the operation of the facility pretreatment program, or when requested by the city, the DEP or EPA.

(Ord. of 5-15-06; 4-5-10)

Sec. 27-38. Monitoring facilities.

The city may require each industrial user to provide and operate, at the industrial user's own expense, monitoring facilities to allow inspection, sample, and flow measurement of the building sewer and/or internal drainage systems. The monitoring facility should normally be situated on the industrial user's premises, but the city may, when such a location would be impractical or cause undue hardship on the user, to allow the facility to be constructed in the public street or sidewalk area and located so that it will not be obstructed by landscaping or parked vehicles.

There shall be ample room in or near such sampling manhole or facility to allow accurate sampling and preparation of samples for analyses. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition by and at the expense of the industrial user.

Whether constructed on public or private property, the sampling and monitoring facilities shall be provided in accordance with the city's requirements and all applicable

local construction standards and specifications. Construction shall be completed within ninety (90) days following written notification to the industrial user by the city. (Ord. of 5-15-06; 4-5-10)

Sec. 27-39. Inspection and sampling.

The city may inspect the facilities of any industrial user to ascertain whether the purpose and requirements of these rules and regulations are being met. Persons or occupants of premises where wastewater is created or discharged shall allow the city or its representative ready access at all times to all parts of the premises for the purpose of inspection, sampling, records examination and copying, or the performance of any of their duties. The city, DEP and EPA shall have the right to set up on the user's property such devices as are necessary to conduct sampling, inspection, compliance monitoring, and/or metering operations. Where a user has security measures in force which would require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that upon presentation of suitable identification, personnel from the city, DEP and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities.

- (a) The City shall have the right to set up on the User's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the User's operations.
- (b) The City may require the User to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the User at its own expense. All devices used to measure wastewater flow and quality shall be calibrated at a frequency determined by the City to ensure their accuracy.
- (c) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the User at the written or verbal request of the City and shall not be replaced. The costs of clearing such access shall be born by the User.
- (d) Unreasonable delays in allowing the City Engineer access to the User's premises shall be a violation of these rules.

If the City has been refused access to a building, structure, or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of these rules, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program of the City designed to verify compliance with these rules or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community, the City may seek issuance of a search warrant from the community in which the discharge is located.

(Ord. of 5-15-06; 4-5-10)

Sec. 27-40. Confidentiality of information.

In accordance with 40 C.F.R. § 403.14 and 1 M.R.S.A. § 401 et seq., any information and data concerning an industrial user which is contained in or obtained from reports, questionnaires, permit applications, permits, monitoring programs, and inspections shall be available to the public and governmental agencies without restriction, unless the user

specifically claims, and is able to demonstrate to the satisfaction of the city, that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user in accordance with applicable law. Any such claim of confidentiality must be asserted at the time of submission in the manner prescribed on the application form or instruction and the words “CONFIDENTIAL BUSINESS INFORMATION” must be stamped or written on each page containing such information. If no claim is made, the city may make the information available to the public without further notice.

Notwithstanding any claim of confidentiality, any information and data provided to the city which is effluent data, as defined at 40 C.F.R. § 2.302 (including, but not limited to, wastewater constituents and characteristics), shall be available to the public without restriction. All other information and data shall be available to the public at least to the extent provided by 40 C.F.R. § 2.302.

Information accepted by the city as confidential shall not be made available for inspection by the public, except as provided by 40 C.F.R. § 2.304 and M.R.S.A. § 401 et seq., but shall be made available upon written request to governmental agencies for uses related to these rules and regulations, the National Pollutant Discharge Elimination System (NPDES) Permit, DEP permit, and the industrial pretreatment program; provided, however, that such portions of a report shall be available for use by the state or any state agency, the city, or by the United States or EPA in criminal or civil judicial or administrative enforcement proceedings involving the user.

(Ord. of 5-15-06; 4-5-10)

Sec. 27-41. Notice of violation.

When the city finds that a user has violated, or continues to violate, any provision of these rules and regulations, an industrial discharge permit condition or order issued hereunder, the city may serve upon that user a written notice of violation. Within 10 days of receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the city.

When the city finds that a user has violated the discharge limitations as set forth in the user’s permit, the city will serve upon that user a written notice of violation. Within five (5) days of the receipt of this notice, the user shall submit to the city a written report with corrective and preventive action taken to prevent recurrence.

Nothing in this section shall limit the authority of the city to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation. Submission of this plan or report in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violations.

If the user fails to respond to the notice of violation within the specified times noted above, or fails to provide the required information specified in the notice of violation, the city will take whatever measures necessary to correct or alleviate the violation. The district staff will be made available to assist in developing or implementing corrective measures, if requested by the city.

If the city fails to act within a reasonable period of time to correct such deleterious acts, or otherwise fails to act responsibly in protecting the facility, the district may

directly impose requirements to correct deleterious acts or violations of these rules and regulations on persons, firms, or corporations causing or contributing to such violations. In such cases any action required by the District such as, but not limited to, pretreatment of prohibited wastes or flow equalization facilities, will be done entirely at the cost of the industrial user and subject to review and approval of the city.

The district staff may, if determined necessary by the district and after attempting to notify the city and bearing proper identification, enter all premises connected to the system, at reasonable hours all times for the purpose of inspection, measurement, sampling and testing to determine the quantity and character of wastes and wastewaters discharged or otherwise enforce these rules and regulations, including the inspection and copying of reports and records relating to the industrial pretreatment program.

Further, the district may, by complaint to the Superior Court, restrain or enjoin any person, firm, corporation or municipality from committing any act which may damage or impair the facility or which is prohibited by any rule or regulation of the district.

(Ord. of 5-15-06; 4-5-10)

Sec. 27-42. Penalties.

Any user of the system who violates any provision of the laws administered by the city pertaining to pretreatment standards and requirements, including without limitation a violation of the terms or conditions of any rule or regulation of the city, is subject to a civil penalty payable to the city in accordance with the Master Fine Schedule attached hereto as Appendix C. The city may recover the civil penalty by civil action in the District Court or Superior Court. (Ord. of 5-15-06; 4-5-10)

Schedule A

Portland Water District Westbrook POTW

| Parameter | (Daily Maximum) Discharge Limits (mg/l) |
|------------------|--|
| BOD | 1371 |
| TSS | 2816 |
| Arsenic | 0.094 |
| Cadmium | 0.0132 |
| Chromium | 2.35 |
| Copper | 0.69 |
| Cyanide | 0.52 |
| Lead | 0.33 |

| | |
|---------|--------|
| Mercury | 0.0037 |
| Nickel | 0.20 |
| Silver | 0.14 |
| Zinc | 1.41 |

The Control Authority may grant a variance to an industrial user discharging into the sewer system when the industrial user provides sufficient historical documentation to support such request. The Control Authority must determine that allowing such a variance will not:

- a) result in an increase of the Maximum Allowable Industrial Headworks Loading*
- b) result in a non permitted discharge from the POTW*
- c) adversely affect the treatment of wastewater*
- d) adversely impact the sanitary sewer system*
- e) be in violation of any applicable local, state or federal law or regulation*

Should such variances be authorized, any industrial user receiving the variance will impact the total available loadings to other industrial facilities within the treatment system.

The Control Authority will be required to assess the effectiveness of any variances. Modifications to local, state or federal requirements or wastewater characteristic changes within the wastewater system would also require the reevaluation of any variances.

(Ord. of 4-5-10; 1-27-14)

Chapter 28

[Site Plan Review Ordinance deleted; see now Appendix A, Land Use Ordinances]

Chapter 29

STREETS AND SIDEWALKS

- Art. I.** [In General](#), §§ 29-1 - 29-17
- Art. II.** **Street and Construction Improvements**, §§ 29-18 - 29-53
 - [Div. 1. Generally](#), §§ 29-18 - 29-30
 - [Div. 2. Specifications](#), §§ 29-31 - 29-53
- Art. III.** [Sidewalks](#), §§ 29-54 - 29-78
- Art. IV.** [Excavations](#), §§ 29-79 - 29-120
- Art. V.** [Driving Installations and Alterations](#), §§ 29-121 - 29-125
- Art. VI.** [Non-Storm Water Discharge](#), §§ 29-126 - 29-134

ARTICLE I. IN GENERAL

Sec. 29-1. Authorized delay of street acceptance.

Action on requests received in the period of November 15 through April 15 for acceptance of any street shall be delayed for one (1) year from the date of such request. (Ord. of 2-2-59, § 3; Ord. of 7-10-67)

Sec. 29-2. Municipal officers to have streets named, signs posted.

The municipal officers shall cause every public street within the city to be properly named, and the name of each shall be plainly printed and posted in a suitable and conspicuous place, and where one highway enters or crosses another, guide posts shall be erected and maintained as required by law.

Sec. 29-3. Municipal officers to have dwellings, buildings numbered.

The municipal officers shall have power to cause numbers of regular series to be affixed to or inscribed on all dwelling houses and other buildings fronting on any street or highway at their discretion; and they shall determine the form, size and material of such numbers and the mode, place and succession of the inscription.

Sec. 29-4. Unlawful not to number dwellings, buildings when directed to do so.

No owner or occupant of a dwelling house, building or a part thereof shall refuse or neglect to comply with the duty designated by the municipal officers in regard to the numbering authorized by the preceding section of such dwelling house or building.

Sec. 29-5. Removal of snow from private property to streets or sidewalks; penalty.

No person shall lay, throw, place or plow or cause to be laid, thrown, placed or plowed, on or into any public street or public sidewalk, any snow or ice from private property. Any person or firm found in violation of this section shall be subject to the penalty provisions of Sec. 1-8 of this Code. (1942 Rev. Code, Ch. XVI, § 20; Ord. of 2-5-62; Ord. of 4-26-10)

Sec. 29-6. Depositing, placing of rubbish, refuse, etc., prohibited.

No person shall place, sweep or deposit any dirt, ashes, shavings, filth, rubbish or refuse of any kind in or upon any street, sidewalk, lane, alley or public place in the city. (1942 Rev. Code, Ch. XVI, § 8)

Sec. 29-7. Drainage on streets prohibited.

No person shall empty or let out upon the surface of any street any cellar drain, sink drain, or other drain so that the water shall flow therefrom upon the surface of the street. (1942 Rev. Code, Ch. XVI, § 9)

Sec. 29-8. Underground street lighting in development.

When underground service is to be installed by a developer in any present or proposed street for street lights and power facilities the following regulations shall apply :

- (a) The developer shall indicate on the plans for the development the proposed location of all underground wiring, also the type and location of all street light poles and fixtures, together with a letter or review from Central Maine Power Co., indicating its approval of the installation.
- (b) All special or ornamental light poles and/or street light fixtures must be of a type maintained in the Central Maine Power Co., inventory to assure their availability for future maintenance and replacement.
- (c) The plans for such installations must be approved by the planning board and the installation of all street light poles and light fixtures must be approved by the city council.
- (d) The developer, in conjunction with Central Maine Power Co., or its successor(s), shall install all such underground electric service, street light poles and light fixtures in accordance with the approved plan for such installations and subject to the approval of the city engineer at no cost to the city.
- (e) All special or ornamental street light poles shall become the property of the city upon being installed by the developer and shall thereafter be maintained by the city at its expense.
- (f) When the development becomes occupied by residents or tenants, the city shall order electric service for such street lights which shall be provided by the city. (Ord. of 11-26-73)

Secs. 29-9 - 29-17. Reserved.

ARTICLE II. STREET CONSTRUCTION AND IMPROVEMENTS¹

DIVISION 1. GENERALLY

Sec. 29-18. Laying out, acceptance, extension of streets less than fifty feet wide.

(a) No new street less than fifty (50) feet wide shall be laid out and accepted by the council as a public street unless the same shall have been actually dedicated and constructed and used for public travel prior to February 2, 1959.

¹ **Charter reference** – Council's exclusive authority to lay out, widen, alter or discontinue streets, § 14.

(b) No street dedicated or constructed prior to February 2, 1959, shall be accepted nor any street previously accepted be extended in length which is of a width less than fifty (50) feet, unless the owners of the property adjoining and abutting such street shall deed to the city sufficient land to lay out a street of minimum width, excepting as hereinafter provided. (Ord. of 2-2-59, § 1)

Sec. 29-19. Prerequisites to acceptance of previously constructed streets.

No street dedicated and constructed prior to February 2, 1959, shall be accepted by the council until a plan of such proposed public street is recorded in the Cumberland County Registry of Deeds and in the office of the city engineer and shall meet whatever further requirements as may be properly established from time to time. (Ord. of 2-2-59, § 1)

Sec. 29-20. Acceptance of streets with minimum width of thirty feet.

Any street constructed, dedicated and used for public travel prior to February 2, 1959, may be accepted with a minimum width of thirty (30) feet provided such street has an outlet at both ends into a public street of the city. (Ord. of 2-2-59, § 1)

Sec. 29-21. Prerequisites to acceptance of streets constructed on private land.

No street constructed on private lands by the owners or by virtue of any agreement with the owners thereof, shall be recommended by any committee or officer or agent or servant of the city to the council for laying out or acceptance as a public street of the city, unless the same shall have been previously constructed in accordance with the specifications as set forth in this article and such specifications shall constitute the minimum requirements for the laying out and acceptance of such street. (Ord. of 2-2-59, § 1)

Sec. 29-22. Public interest governs acceptance of streets.

Nothing in this article is to be construed as a limitation on the council to accept any street in the city as a public street whenever the public interest so requires. (Ord. of 2-2-59, § 1)

Secs. 29-23 - 29-30. Reserved.

DIVISION 2. SPECIFICATIONS

Sec. 29-31. Plan, plot to be filed with engineer; engineer to fix grades.

The plan and plot of every street to a scale of forty (40) feet to one (1) inch and to be on one (1) or more sheets of suitable paper not exceeding twenty-four (24) inches by thirty-six (36) inches in size, shall be filed in the office of the city engineer who shall fix the grades thereof. (Ord. of 2-2-59, § 2 (a))

Sec. 29-32. Contents of plot plan; boundary monuments regulated.

The plot plan required by the preceding section shall show the north point, the areas of all lots, the lengths of all lot lines, the location and ownership of all adjoining subdivisions and adjacent acreage, passageways, street lines, buildings, set boundary monuments, waterways, topography and natural drainage courses, all angles necessary for the plotting of such streets and lot lines and their reproduction on the ground, the distance to the nearest established street line and any buildings abutting on such street, together with the stations of their side lines.

The above mentioned boundary monuments shall not be less than six (6) inches square at the top, eight (8) inches square at the bottom and four (4) feet in length with no undue projections at the sides. (Ord. of 2-2-59, § 2(a))

Sec. 29-33. Sub grade of streets, sidewalks; installation of underground utilities.

The entire area of a street shall be graded to a sub grade of not less than twelve (12) inches for the roadway, except for soil conditions listed below requiring eighteen (18) inches and eight (8) inches for the sidewalk below the finished grade as shown on the plan profile and cross-section as provided for in this article. Eighteen (18) inches shall be required when sub base is composed of soft clay, silt, organic material, running sand and ledge.

All underground utilities to serve such street, the buildings, residents and occupants shall be installed at this time or proper and consistent provision made for same. (Ord. of 2-2-59, §§ 2(a), 2(e))

Sec. 29-34. Contents of profile; to be filed with engineer.

A profile of a proposed street drawn to a longitudinal scale of forty (40) feet to one (1) inch and a vertical scale of four (4) feet to one (1) inch shall show the profile of the side lines and center lines of such street and the proposed grades thereof. Any building abutting on such street shall also be shown on the profile.

Such profile shall be filed with the office of the city engineer, who shall fix the grades thereof. (Ord. of 2-2-59, § 2 (b))

Sec. 29-35. Cross-section of streets to be filed; required scale of cross-section.

A cross-section of a proposed street, drawn to a horizontal scale of five (5) feet to one (1) inch and a vertical scale of one (1) foot to one (1) inch shall be filed with the office of the city engineer. (Ord. of 2-2-59, § 2 (c))

Sec. 29-36. Copy of plan, profile to be filed with planning board, sewerage division.

A copy of the plan and profile required by this article shall be filed with the planning board for its consideration and approval. Such plan and profile shall also be filed with the sewerage division which shall designate the design, grades and capacity of its sewerage system as it shall apply and as may be determined by its commissioners. (Ord. of 2-2-59, § 2 (d))

Sec. 29-37. Construction requirements generally.

Every new street shall be constructed to its full width and length and shall conform accurately to the grades and cross sections as determined by the city engineer and shown on the plan and profile hereinbefore mentioned. The entire area of every such street shall be first cleared of all stumps, roots, brush and all perishable materials and of all trees not intended for preservation and of all other matter and material not necessary and useful for such purpose. All loam and loamy materials, as well as clay, shall be removed from the limits of the street, inclusive of sidewalks to such depths as may be approved by the city engineer. (Ord. of 2-2-59, § 2(e))

Sec. 29-38. Requirements for sewers prior to acceptance of streets.

Before acceptance, the plan and profile of a proposed street shall be filed with the sewerage division, which shall determine the feasibility of the construction of a sewer and if such construction is deemed advisable by the commissioners of the division, said construction of the sewer shall become a condition to the final acceptance of such street. No street in which there is constructed a private or common sewer or drain shall be accepted as a public street until such drain or sewer has been properly conveyed by proper instrument of transfer to the division, its successors and assigns. (Ord. of 2-2-59, § 2(f))

Sec. 29-39. Water mains required prior to acceptance of streets.

Before acceptance of a new street, a water main of at least eight (8) inches in diameter must exist in such street. Provided, however, that the council may accept as a public street, a street with a water main therein less than eight (8) inches in diameter when the chief engineer of the fire department, the planning board and the Portland Water District, each in writing, do certify that a water main of less than the prescribed eight (8) inches in diameter will furnish adequate water service and sufficient fire protection service will prevail for the street to be accepted and for any future extension or extensions of such street. (Ord. of 2-2-59, § 2(g))

Sec. 29-40. Streets, sidewalks brought to finished grade; requirements of materials.

After the sewer and other utilities have been constructed, the entire area of the street shall be brought to a finish grade as shown on the plan, profile and cross-sections hereinbefore mentioned, and properly compacted in lifts of not over six (6) inches each to the satisfaction of the city engineer. The roadway shall be graded for a minimum width of thirty (30) feet with a good, heavy binding gravel or crushed stone specified as follows: This gravel or crushed stone shall be furnished from sources approved by the city engineer and may be bank run gravel. The gravel shall be composed of hard, sound, durable fragments of rock, having uniform resistance to abrasion, together with fine material, such as sand, clay or other material approved as a binder by the city engineer.

The sidewalks shall be graded with gravel and the planting spaces or esplanades shall be graded with loam where required. (Ord. of 2-2-59, § 2(h))

Sec. 29-41. Previously constructed streets to be free of stumps, etc.; engineer to regulate culverts, waterways.

The entire area of streets dedicated and constructed prior to February 2, 1959, shall be free from stumps, roots, brush, perishable material and ledge.

All culverts and waterways considered necessary by the city engineer, shall be constructed of a size and in a manner satisfactory to the city engineer. (Ord. of 2-2-59, § 2(i))

Sec. 29-42. Dead-end streets.

After February 2, 1959, no dead-end street or way shall be constructed for acceptance by the city as a public street, unless the same shall not be more than -five hundred (500) feet in length, and shall have a suitable turnaround area at the end. When a circle is used, it shall have a minimum radius of fifty (50) feet.

Compliance with the above conditions and specifications will render a street, constructed on private land by the owners thereof, eligible for consideration by the council for laying out and acceptance as a public street for the use of the city. (Ord. of 2-2-59, § 3)

Sec. 29-43. Public hearing for aggrieved party.

Any person aggrieved by any of the provisions of this article may file, in writing, a brief statement of the cause of their grievance with the city clerk. Notice of a public hearing before the council on same shall be posted at least seven (7) days before a regular or special meeting of the council at which hearing the complaining parties may come to be heard with any witnesses material to the issue. When all evidence has been heard and considered, the council shall arrive at a final determination of such issue. (Ord. of 2-2-59, § 4)

Secs. 29-44 - 29-53. Reserved.

ARTICLE III. SIDEWALKS¹

Sec. 29-54. Committee on highways to render information on future construction.

Whenever the committee on highways shall deem it for the interest of the city to construct any sidewalk, they shall as certain as nearly as may be the probable cost of the same, together with the general description of location, width, material to be used, etc., and present the same to the council. (1942 Rev. Code, Ch. XXVII, § 2)

Sec. 29-55. Engineer to prepare plan, schedule of lots benefited; mayor to make presentment to council.

The city engineer, acting under the authority of the mayor, shall, after the construction of a sidewalk, prepare a plan showing all lots benefited by such sidewalk, the size of each lot, and the name of the owner, if known, shall be plainly marked on such plan.

He shall also prepare a schedule of the betterments upon such lots as hereinafter provided in this article; and the mayor shall present such plan with the accompanying schedule, cost of sidewalk, etc., to the council as soon thereafter as practicable. (1942 Rev. Code, Ch. XXVII, § 3)

Sec. 29-56. Procedure for determining assessments on lots benefited by sidewalks.

The amount to be assessed upon lots abutting any newly constructed sidewalk, or sidewalk hereafter constructed, shall be twenty per cent (20%) of the cost of such sidewalk, meaning by this the cost of the material and expense of construction inclusive of the grading. (1942 Rev. Code, Ch. XXVII, § 5)

Sec. 29-57. Municipal officers to levy, certify assessment; collector to collect.

The municipal officers shall, after giving a public hearing in respect to the provisions of the preceding section, proceed to levy the assessments upon the lots benefited, and such assessments shall be plainly marked upon the city engineer's plan required by section 29-55. The assessments shall be certified to the collector of taxes by the council, and after such certification, the plan shall be placed in the collector's custody, and he shall proceed to collect the same according to the provisions of the charter. (1942 Rev. Code, Ch. XXVII, §§ 4, 6)

Sec. 29-58. Recording of collection of assessment.

When an assessment required by the preceding section is paid, the collector shall enter such payment, the date thereof and the name of the person making such payment on the plan of the lot on which such assessment is made, as well as in a book kept for the purpose. Such plan shall form a part of the records of the city. (1942 Rev. Code, Ch. XXVII, § 4)

Sec. 29-59. Mayor to construct, repair.

The mayor, through his subordinates, including a competent city engineer, shall lay out, construct and repair all sidewalks that may be authorized by the council. (1942 Rev. Code, Ch. XXVII, § 1)

Sec. 29-60. Mayor to keep account of construction costs, render report to council.

The mayor shall keep or cause to be kept an accurate account of the expense of the construction of each sidewalk built, and report the same to the council as soon after the completion of such sidewalk as practicable. (1942 Rev. Code, Ch. XXVII, § 3)

¹ **Charter reference** – Council's authority to lay out, construct and regulate sidewalks, § 14; **State law reference** – Municipal authority to establish and regulate the use of sidewalks, 30-A M.R.S.A. § 3001.

Sec. 29-61. Minor repairs authorized without reference to council.

The mayor, through his subordinates, may make repairs on sidewalks to the extent not to exceed one hundred dollars (\$100.00) on any one (1) sidewalk without reference to the council. (1942 Rev. Code, Ch. XXVII, § 7)

Sec. 29-62. Maintenance expenses.

After a sidewalk is built, it shall be maintained at the expense of the city ; provided that when any sidewalk shall require repairs in consequence of any defect in the cellar door, cellar windows, coal hole, cellar wall, or from any other cause within the control of the owner or occupant of the estate to which such sidewalk adjoins, then and in that case repairs shall be made at the expense of the owner or occupant of such estate. (1942 Rev. Code, Ch. XXVII, § 10)

Sec. 29-63. Curbsings.

All curbsings for sidewalks shall be of first quality granite, and be at least six (6) feet long and of a uniform depth of not less than eighteen (18) inches, and not less than six (6) inches in width on the upper edge.

This section shall be enforced unless otherwise ordered by the council in any particular instance. (1942 Rev. Code, Ch. XXVII, § 8)

Sec. 29-64. Altering sidewalks, setting posts, trees on sidewalks, streets.

No person shall make any alteration in any sidewalk, or set any posts or trees on any of the sidewalks, or in any part of the street, without the consent of the mayor. (1942 Rev. Code, Ch. XXVII, § 9)

Sec. 29-65. Obstructing sidewalks.

No person shall, without a license or permit, pile, deposit or place any rubbish, wood, coal, merchandise or obstruction of any kind upon any sidewalk, nor so occupy or obstruct any sidewalk as to prevent the convenient use of the same by all passengers. (1942, Rev. Code, Ch. XVI, § 2)

Sec. 29-66. Vehicles not to be propelled on sidewalks.

No person shall draw, propel or wheel any cart, sled or other vehicle or carriage, except children's carriages upon any sidewalk. (1942 Rev. Code, Ch. XVI, § 5)

Sec. 29-67. Repealed. (1942 Rev. Code, Ch. XVI, § 18; Ord. of 2-5-62; Ord. of 4-26-10)

Sec. 29-68. Repealed. (1942 Rev. Code, Ch. XVI, § 19; Ord. of 2-5-62; Ord. of 4-26-10)

Secs. 29-69 - 29-78. Reserved.

ARTICLE IV. EXCAVATIONS¹**Sec. 29-79. Title.**

This article shall be known and may be cited as "The Street Excavation Ordinance of the City of Westbrook." (Ord. of 11-2-70, § 1)

Sec. 29-80. Definitions.

¹ **State law reference** – State regulations regarding excavations in cities, 23 M.R.S.A. §§ 3351-3359.

Applicant is any person making a written application to the city for an excavation permit and for whom the permit is to be issued.

City is the City of Westbrook.

City Engineer shall include the City Engineer and his authorized assistants under his direction and supervision.

Director of public works shall include the city's director of public works and his authorized assistants under his direction and supervision.

Permittee is any person who has been granted an excavation permit issued hereunder.

Person is any person, firm, partnership, association, corporation, company or organization of any kind.

Street is any street, highway, sidewalk, alley, avenue or other public passage way or public grounds in the city.

Inspector shall be a duly authorized representative of the city or other designee.

Licensee shall be any person, firm or corporation who or which has applied for and been issued an annual excavator license as required by this article.

(Ord. of 11-2-70, § 2; Ord. of 7-6-09)

Sec. 29-81. Excavation permits required; to be issued only for excavations contained in annual planned work program, exceptions; limitation on time to commence work.

(a) License: No person or utility shall be granted a permit to excavate in a public place without holding a valid license for such work from the city. The City Engineer or Designee shall issue such license upon receipt of a completed application, the required license fee, and proof of liability insurance. No person or utility possessing such license shall allow his or her name to be used by any person or utility, directly or indirectly, either to obtain a permit or to do any work under this license; provided, however, that nothing herein shall be construed to prohibit a licensed excavator from doing such work through an authorized agent or employee who is directly and continuously supervised by him while in the performance thereof. A license issued to an excavator may be revoked by the City Engineer or designee after notice to the licensee, if the City Engineer or Designee deems that the licensed excavator has willfully disobeyed any portion of this article. The annual excavator license is valid from January 1 to December 31 and contains no prorated provisions.

(b) It shall be unlawful for any person to dig up, excavate, tunnel, undermine or in any manner break up any street, or to make or cause to be made any excavation in or under the surface of any street for any purpose, or to place, deposit or leave upon any street any earth or other material obstructing or tending to interfere with the free use of the street, unless such person shall first have obtained an excavation permit therefor from the director of public services, City Engineer or Designee, as herein provided.

(c) Each year on or before March 31st, each utility shall submit to the director of Public Services, City Engineer or Designee its planned work program for the ensuing year, which shall not include emergencies as defined in section 29-111 herein nor normal house service lines. Thereafter, no permit shall be issued to a utility for excavations not contained within its planned work program, except for emergencies and normal house service lines, unless a written

application for such excavation shall be specifically approved by the City Engineer, Director of Public Services or Designee.

(d) Excavation work must be started no later than thirty (30) days from the date of issue of the excavation permit. After the expiration of this thirty (30) day period, such excavation permit shall become null and void and shall have to be renewed.

(e) No person shall be granted a permit to excavate or open any street or sidewalk from the time of December 1st of each year to March 31st of the following year unless an emergency or special condition exists and permission is obtained in writing from the director of Public Services, City Engineer or Designee. Any person wishing to obtain an excavation permit between these aforementioned dates shall first explain fully in writing the emergency or special condition to the City Engineer, Director of Public Services or Designee before issuance is granted. If a hazardous condition, which could endanger life and/or property, exists, excavation work shall not be delayed by this section of this article; provided, however, a written explanation shall be delivered to the city as soon as possible and a street opening permit obtained for the opening made. (Ord. of 11-2-70, § 3; Ord. of 11-4-74; Ord. of 7-6-09)

Sec. 29-82. Application for permit.

(a) No excavation permit shall be issued unless a written application for the issuance of same is submitted to the director of Public Services, City Engineer or Designee.

(b) The application shall state the name and address of the applicant, the nature, location and purpose of the excavation, the date of commencement and date of completion of excavation.

(c) The application shall be accompanied by a plan or plans showing the extent of the proposed excavation work, including its location, the dimensions and elevations of the proposed excavated surfaces, and such other information as may be reasonably required by the director of Public Services, City Engineer or Designee.

(d) The application shall be accompanied by proof of notice to the utilities as provided by the Dig Safe authorization number, or such successor law, as may be amended from time to time. (Ord. of 11-2-70, § 4; Ord. of 11-4-74; Ord. of 7-6-09)

Sec. 29-83. Excavation permit fees.

(a) An application fee shall be paid in accordance with the Master Fee Schedule, attached hereto as Appendix B, for each issuance and for each renewal of an excavation permit, in addition to other fees also set forth in the Master Fee Schedule.

(b) An additional fee shall be charged in accordance with the Master Fee Schedule for a nonemergency street or sidewalk opening within a five-year period of any major paving project, and all residents shall be notified by certified mail sixty (60) days prior to the start of major paving projects.

(c) The applicant shall estimate the size of the excavation and pay the city a deposit in that amount, prior to commencing work, pursuant to the Master Fee Schedule.

(Ord. of 11-2-70, § 5; Ord. of 11-4-74; Ord. of 12-15-75; Ord. of 7-6-82; Ord. of 10-21-85; Ord. of 2-3-86; Ord. of 1-22-91; Ord. of 7-6-09)

Sec. 29-84. Minimum permit fee and special conditions.

(a) There shall be a minimum permit fee as set forth in the Master Fee Schedule for any street or sidewalk excavation equivalent to three (3) square yards at the above applicable rate per square yard.

(b) Where three (3) or more street openings are made in sequence (15 feet or less, center to center, between each adjacent opening) the applicant shall be charged for one opening measured from the first opening to the last opening.

(c) Where street openings exceed one hundred (100) square yards the applicant may request the city's permission to contract privately for the street or sidewalk repairs. If the city agrees the applicant or private contractor shall post a bond for the estimated amount of street opening times the above applicable unit rate. All street repair work must be done in accordance with city specifications and is subject to inspection by the city engineer, director of public services, or designee. However, the city shall charge the applicant or contractor for its engineering and inspection charges incurred during the street excavation and repair work. (Ord. of 11-2-70, § 6; Ord. of 1-22-91; Ord. of 7-6-09)

Sec. 29-85. Excavation placard to be posted.

Repealed. (Ord. of 11-2-70, § 7; Ord. of 7-6-09)

Sec. 29-86. Deposit of permit fees.

All such excavation permit fees shall be paid to the city and shall constitute a special fund for the repair and repaving of such excavations. (Ord. of 11-2-70, § 8; Ord. of 11-4-74)

Sec. 29-87. Routing of traffic.

The permittee shall take appropriate measures to ensure that during the performance of the excavation work traffic conditions as nearly normal as practicable shall be maintained at all times so as to cause as little inconvenience as possible to the occupants of the abutting property and to the general public, provided that the chief of police may permit the closing of streets to all traffic for a period of time prescribed by him if in his opinion it is necessary. The permittee shall route and control traffic including its own vehicles in accordance with the Manual on Uniform Traffic Control Devices and as directed by the Police Department and/or City Engineer. The following steps shall be taken before any highway work is commenced which interferes with the normal flow of traffic:

- (a) The permittee must receive the approval of the City Engineer or Designee and the police department at least twenty-four (24) hours prior to the start of the work in nonemergency situations and prior to the start of work in emergency situations. The chief of police, after consultation with the Fire Chief, must approve all traffic control measures as he deems to be safe, and they may prescribe other measures which they deem necessary to properly control and to safeguard traffic;
- (b) The permittee must notify the Public Safety Communications Center of any street or lane so closed;
- (c) Upon completion of construction work, the permittee shall notify the city engineer and the Public Safety Communications Center before traffic is moved back to its normal flow so that any necessary adjustments may be made;
- (d) Where flagpersons or traffic control devices are deemed necessary by the city engineer or the chief of police, they shall be furnished by the permittee at its own expense. All such flagpersons shall be subject to the approval of the chief of police. The chief of police may

require that the permittee employ trained and experienced flagpersons. The City may also require municipal police officers to be used during the period of construction. The cost of utilizing the off-duty officers shall be the responsibility of the applicant. Through traffic shall be maintained without the aid of detours, if possible. In instances in which this would not be feasible, the City Engineer will designate detours. The city shall maintain roadway surfaces of existing highways designated as detours without expense to the permittee, but in case there are no existing highways, the permittee shall construct all detours at its expense and in conformity with the specifications of the city engineer. The permittee will be responsible for any unnecessary damage caused to the highways by the operation of its equipment.

- (e) Any Excavation requiring a lane closure within an arterial or major collector street as defined by the Maine Department of Transportation shall be limited to the hours of 8 am to 3:30 pm unless authorized by the City Engineer. The City may also require municipal police officers to be used during a lane closure within an arterial or major collector street. The cost of utilizing the off-duty officers shall be the responsibility of the applicant. (Ord. of 11-2-70, § 9; Ord. of 8-15-77; Ord. of 7-6-09; Ord. of 5-13-13)

Sec. 29-88. Clearance for fire equipment.

The excavation work shall be performed and conducted so as not to interfere with access to fire stations and fire hydrants. Materials or obstructions shall not be placed within fifteen (15) feet of fire hydrants. Passageways leading to fire escapes or fire-fighting equipment shall be kept free of piles of material or other obstructions. (Ord. of 11-2-70, § 10; Ord. of 7-6-09)

Sec. 29-89. Protection of traffic.

The permittee shall erect and maintain suitable metal barriers compliant with the Occupational Safety and Health Administration to confine earth from trenches or other excavations in order to encroach upon highways as little as possible. The permittee shall construct and maintain adequate and safe crossings over excavations and across highways under improvement to accommodate vehicular and pedestrian traffic. Vehicular crossings shall be steel plates of a thickness to accommodate vehicular traffic safely. The walk ways shall be not less than five (5) feet in width and shall be provided with a railing as required by the City Engineer. (Ord. of 11-2-70, § 11; Ord. of 7-6-09)

Sec. 29-90. Removal and protection of utilities.

The permittee shall not interfere with any existing utility other than their own facilities without the written consent of the City Engineer and the utility company or person owning the utility. If it becomes necessary to remove an existing utility this shall be done by its owner. No utility owned by the city shall be moved to accommodate the permittee unless the cost of such work be borne by the permittee. The cost of moving privately owned utilities shall be similarly borne by the permittee unless it makes other arrangements with the person owning the utility. The permittee shall support and protect by timbers or otherwise all pipes, conduits, poles, wire or other apparatus which may be in any way affected by the excavation work, and do everything necessary to support, sustain and protect them under, over, along or across said work. In case any of said pipes, conduits, poles, wire or apparatus should be damaged, they shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee, and his or its bond shall be liable therefor. The permittee shall be responsible for any damage done to any public or private property by reason of the breaking of any water pipes, sewer, gas pipe, electric conduit or other utility and its bond shall be liable therefor. The permittee shall

inform itself as to existence and location of all underground utilities and protect the same against damage. (Ord. of 11-2-70, § 12)

Sec. 29-91. Protection of adjoining property.

The permittee shall at all times and at his or its own expense preserve and protect from injury any adjoining property by providing proper foundations and taking other measures suitable for the purpose. Where in the protection of such property it is necessary to enter upon private property for the purpose of taking appropriate protective measures, the permittee shall obtain a license from the owner of such private property for such purpose and if he cannot obtain a license from such owner the City Engineer may authorize him to enter the private premises solely for the purpose of making the property safe. The permittee shall, at its own expense shore up and protect all buildings, walls, fences or other property likely to be damaged during the progress of the excavation work and shall be responsible for all damage to public or private property or highways resulting from its failure properly to protect and carry out said work. Whenever it may be necessary for the permittee to trench through any lawn area, it will be returned to the original condition after ditches have been backfilled as required in this article. All construction and maintenance work shall be done in a manner calculated to leave the lawn area clean of earth and debris and in a condition as nearly as possible to that which existed before such work began. The permittee shall not remove even temporarily any trees or shrubs which exist in parking strip areas or easements across private property without first having notified and obtained the consent of the property owner, or in the case of public property the appropriate city department or city official having control of such property. (Ord. of 11-2-70, § 13; Ord. of 7-6-09)

Sec. 29-92. Sidewalk excavations.

Any excavation made in any sidewalk or under a sidewalk shall be provided with a substantial and adequate footbridge over said excavation on the line of the sidewalk, which bridge shall be at least three (3) feet wide and securely railed on each side so that foot passengers can pass over safely at all times. (Ord. of 11-2-70, § 14)

Sec. 29-93. Protective measures.

The permittee shall erect such fence, railing or barriers about the site of the excavation work as shall prevent danger to persons using the city street or sidewalks, and such protective barriers shall be maintained until the work shall be completed or the danger removed. At twilight there shall be placed upon such place of excavation and upon any excavated materials or structures or other obstructions to streets suitable and sufficient lights which shall be kept illuminated throughout the night during the maintenance of such obstructions. It shall be unlawful for anyone to remove or tear down the fence or railing or other protective barriers or any lights provided there for the protection of the public. (Ord. of 11-2-70, § 15; Ord. of 7-6-09)

Sec. 29-94. Attractive nuisance.

It shall be unlawful for the permittee to suffer or permit to remain unguarded at the place of excavation or opening any machinery, equipment or other device having the characteristics of an attractive nuisance likely to attract children and hazardous to their safety or health. (Ord. of 11-2-70, § 16)

Sec. 29-95. Care of excavated material.

All material excavated from trenches and piled adjacent to the trench or in any street shall be piled and maintained in such a manner as not to endanger those working in the trench, pedestrians or users of the streets, and so that as little inconvenience as possible is caused to those using streets and adjoining property. Where the confines of the area being excavated are too narrow to permit the piling of excavated material beside the trench, such as might be the case in a narrow alley, the City Engineer shall have the authority to require that the permittee haul the excavated material to a storage site and then rehaul it to the trench site at the time of backfilling. It shall be the permittee's responsibility to secure the necessary permission and make all necessary arrangements for all required storage and disposal sites. (Ord. of 11-2-70, § 17)

Sec. 29-96. Damage to existing improvements.

All damage done to existing improvements during the progress of the excavation work shall be repaired by the permittee. Materials for such repair shall conform with the requirements of any applicable code or ordinance. If upon being ordered the permittee fails to furnish the necessary labor and materials for such repairs, the City Engineer shall have the authority to cause said necessary labor and materials to be furnished by the city and the cost shall be charged against the permittee. (Ord. of 11-2-70, § 18)

Sec. 29-97. Property lines and easements.

Property lines and limits of easements shall be indicated on the plan of excavation submitted with the application for the excavation permit and it shall be the permittee's responsibility to confine excavation work within these limits. (Ord. of 11-2-70, § 19)

Sec. 29-98. Clean-up.

As the excavation work progresses all streets and private property shall be thoroughly cleaned of all rubbish, excess earth, rock and other debris resulting from such work. At the end of each day of work, the street surface shall be swept clean of all material and debris. All clean-up operations at the location of such excavation shall be accomplished at the expense of the permittee and shall be completed to the satisfaction of the City Engineer, Director of Public Services or Designee. From time to time as may be ordered by the City Engineer, Director of Public Services or Designee and in any event immediately after completion of said work, the permittee shall at his or its own expense clean-up and remove all refuse and unused materials of any kind resulting from said work and upon failure to do so within twenty-four (24) hours after having been notified to do so by the City Engineer, Director of Public Services or Designee, said work may be done by the city engineer and the cost thereof charged to the permittee. (Ord. of 11-2-70, § 20; Ord. of 7-6-09)

Sec. 29-99. Protection of watercourses.

The permittee shall provide for the flow of all watercourses, sewers or drains intercepted during the excavation work and shall replace the same in as good condition as it found them or shall make such provisions for them as the City Engineer, Director of Public Services or Designee may direct. The permittee shall not obstruct the gutter of any street but shall use all proper measures to provide for the free passage of surface water. The permittee shall make provision to take care of all surplus water, muck, silt, slickings or other runoff pumped from excavations or resulting from sluicing or other operations and shall be responsible for any damage resulting from its failure to so provide. (Ord. of 11-2-70, § 21; Ord. of 7-6-09)

Sec. 29-100. Breaking through pavement.

(a) Whenever it is necessary to break through existing pavement for excavation purposes and where trenches are to be three (3) feet or over in depth, the pavement in the base shall be removed to at least twelve (12) inches beyond the outer limits of the sub grade that is to be disturbed in order to prevent settlement, and a twelve (12) inch shoulder of undisturbed material shall be provided in each side of the excavated trench. The City Engineer or Designee may approve pavement grindings around the trench to the depth of 1 ½" as an alternate to remove the 12" border around the trench.

(b) All excavations on paved street surfaces shall be precut in a neat, straight line with pavement breakers or asphalt saws. Heavy duty pavement breakers may be prohibited by the city when their use endangers existing substructures or property, and no pile driver may be used in breaking up the pavement.

(c) Cutouts of the trench lines must be normal or parallel to the trench line and pavement edges shall be trimmed to a vertical face.

(d) Unstable pavement shall be removed over cave-outs and overbreaks and the sub grade shall be treated as the main trench.

(e) The permittee shall not be required to pay for repair of damage existing prior to the excavation unless his cut results in small floating sections that may be unstable, in which case, the permittee shall remove the unstable portion and the area shall be treated as part of the excavation.

(f) When three (3) or more street openings are made in sequence (fifteen (15) feet or less, center to center, between each adjacent opening), the permittee shall neatly cut and remove the area of pavement between these adjacent openings and the area shall be paved as one opening. (Ord. of 11-2-70, § 22; Ord. of 11-4-74; Ord. of 7-6-09)

Sec. 29-101. Tunnels.

Tunnels under pavement shall not be permitted. (Ord. of 11-2-70, § 23; Ord. of 7-6-09)

Sec. 29-102. Backfilling generally.

Backfilling in any street opened or excavated pursuant to an excavation permit issued hereunder shall be compacted to a degree equivalent to that of the undisturbed ground in which the trench was dug. Compacting shall be done by mechanical tampers or vibrators, by rolling in layers, as required by the soil in question and sound engineering practices generally recognized in the construction industry, not to exceed 12" in depth per layer. The City of Westbrook may require a site inspector during backfilling of said excavation at the Permittee's expense. (Ord. of 11-2-70, § 24; Ord. of 7-6-09)

Sec. 29-103. Backfilling by water settling.

When backfilling, water settling is not permitted. (Ord. of 11-2-70, § 25; Ord. of 7-6-09)

Sec. 29-104. Dry backfilling.

Backfilling up to the first eighteen (18) inches above the top of the utility pipes or similar installations shall be done with thin layers. Each layer is to be tamped by manual or mechanical means. Layers that are hand tamped shall not exceed four (4) inches in thickness. Layers that are power tamped shall not exceed six (6) inches in thickness. The same requirements shall apply to the remainder of the back-filling if tamping is the method used for backfilling. Back-filling of all pipes of over twenty-four (24) inches in diameter shall be carried up to the spring line of the pipe

in three (8) inch layers, with each layer thoroughly tamped with suitable mechanical equipment. The backfill around all pipes twenty-four (24) inches or less in diameter shall be tamped as specified above to a depth of eighteen (18) inches above the top of the pipe before any additional backfilling is placed thereon. The City may request compaction testing at the owner's expense. (Ord. of 11-2-70, § 26; Ord. of 7-6-09)

Sec. 29-105. Backfill material.

Whenever any excavation for the laying of pipe is made through rock, the pipe shall be laid six (6) inches above the rock bottom of the trench and the space under, around and six (6) inches above the pipe shall be backfilled with $\frac{3}{4}$ " crushed stone. Broken pavement, large stones, and debris shall not be used in the backfill. (Ord. of 11-2-70, § 27; Ord. of 7-6-09)

Sec. 29-106. Backfilling at the surface.

The materials composing the surface of the street shall, when excavated, be kept entirely separate from the remainder of the excavation. With the approval of City Engineer, Director of Public Services or Designee; such surface material may be used to replace the surface at the top of the trench, or in lieu thereof, the top of said trench must be refilled with a minimum of two (2) feet of MDOT type A gravel and 3" of compacted crushed gravel. All such backfill shall be thoroughly compacted, mechanically in twelve (12) inch layers. Road Base backfill shall not contain stones larger than four (4) inches in their greatest dimensions, nor shall any frozen backfill be used.

The permittee may be required by the City Engineer, Director of Public Services or Designee to place a temporary surface of hot base mix pavement over excavations in paved traffic lanes, when work will continue the following day.

In the event any settlement in said trench occurs between the time said backfilling shall have been made and the time the Permittee shall have made permanent repairs to said excavations, the Permittee shall be responsible for any accident or damage to others resulting from the settlement in said trench prior to the making of permanent repairs. (Ord. of 11-2-70, § 28; Ord. of 7-6-09)

Sec. 29-107. Notice to city and restoration of surface paving.

Upon completion of the backfilling and area clean up, the permittee shall so notify the city engineer or Designee and request an inspection of the project. After final inspection the city engineer or Designee shall so notify the permittee to restore the surface of the street as near as may be to its original condition as directed. If in the judgment of the city engineer or Designee it is not advisable to immediately replace the street pavement because of weather conditions or otherwise, he may direct that temporary repairs be made until such time as the permanent repairs may be properly made. In high traffic areas concrete may be required as the temporary repair. It shall be at a minimum of 4" thick. Permanent paving repairs shall consist of a minimum of 2" of dense binder base course and 1 $\frac{1}{2}$ " of finish course of Bituminous Pavement. All saw cut pavement edges shall be even and no loose edges. The paving shall be removed 12" beyond all boundaries of the trench or maybe reduced 1 $\frac{1}{2}$ " by grinding. Prior to placing paving all edges and surfaces shall be coated with an asphalt emulsion (Tack Coating). Each layer shall be hand raked and compacted with a steel wheeled roller. For areas inaccessible to a roller, a vibrating plate tamper will be used. Paving shall not be completed unless the air temperature is at a minimum of 50 degrees and rising. If pavement is thicker then the total of the 3 $\frac{1}{2}$ ", the permittee shall replace the same thickness that was removed and in lifts not greater than 2" per course.

It shall be the duty of the permittee to guarantee and maintain the site of the excavation work in the same condition it was prior to the excavation for two (2) years after restoring it to its original condition. (Ord. of 11-2-70, § 29; Ord. of 7-6-09)

Sec. 29-108. Trenches in pipe laying.

Except by special permission from the City Engineer, Director of Public Services or Designee, no trench shall be excavated more than fifty (50) feet in advance of pipe laying nor left unfilled more than twenty five (25) feet where pipe has been laid. The length of the trench that may be opened at any one time shall not be greater than the length of pipe and the necessary accessories which are available at the site ready to be put in place. Trenches shall be braced and sheathed according to generally accepted safety standards for construction work as prescribed by OSHA and the City Engineer, Director of Public Services or Designee. (Ord. of 11-2-70, § 30; Ord. of 7-6-09)

Sec. 29-109. Prompt completion of work.

The permittee shall prosecute with diligence and expedition all excavation work covered by the excavation permit and shall promptly complete such work as soon as practicable and in any event not later than the date specified in the excavation permit therefor, or as subsequently extended by the City Engineer, Director of Public Services or Designee. (Ord. of 11-2-70, § 31; Ord. of 7-6-09)

Sec. 29-110. Urgent work.

If in his judgment traffic conditions, the safety or convenience of the traveling public or the public interest require that the excavation work be performed as emergency work, the City Engineer, Director of Public Services or Designee shall have full power to order, at the time the permit is granted, that a crew of men and adequate facilities be employed by the permittee twenty-four (24) hours a day to the end that such excavation work may be completed as soon as possible. (Ord. of 11-2-70, § 32; Ord. of 7-6-09)

Sec. 29-111. Emergency action.

In the event of any emergency in which a sewer, main, conduit or utility in or under any street breaks, bursts or otherwise is in such condition as to immediately endanger the property, life, health or safety of any individual, the person owning or controlling such sewer, main, conduit or utility, without first applying for and obtaining an excavation permit hereunder, shall immediately take proper emergency measures to cure or remedy the dangerous conditions for the protection of property, life, health and safety of individuals. However, such person owning or controlling such facility shall apply for an excavation permit not later than the end of the next succeeding day during which the City Engineer, Director of Public Services or Designee office is open for business. (Ord. of 11-2-70, § 33; Ord. of 7-6-09)

Sec. 29-112. Noise, dust and debris.

Each permittee shall conduct and carry out the excavation work in such manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. The permittee shall take appropriate measures to reduce to the fullest extent practicable in the performance of the excavation work, noise, dust and unsightly debris and during the hours of 8:00 p.m. and 7:00 a.m. shall not use, except with the express written permission of the City Engineer, Director of Public Services or Designee or in case of an emergency as herein otherwise

provided, any tool, appliance *or* equipment producing noise of sufficient volume to disturb the sleep or repose of occupants of the neighboring property. (0th. of 11-2-70, § 34; Ord. of 7-6-09)

Sec. 29-113. Excavations barred in new street improvements.

(a) Whenever the city council enacts any ordinance or resolution providing for the paving or repaving of any street, the City Engineer, Director of Public Services or Designee shall mail by ordinary mail a notice to each person owning any sewer, main, conduit or other utility in or under said street or any real property, whether improved or unimproved, abutting said street. Such notice shall notify such persons that no excavation permit shall be issued for openings, cuts or excavations in said street for a period of five (5) years after the date of the notice. Such notice shall also notify such persons that applications for excavation permits, for work to be done prior to such paving or repaving, shall be submitted promptly in order that the work covered by the excavation permit may be completed not later than sixty (60) days from the date of such notice. The City Engineer, Director of Public Services or Designee shall also promptly mail copies of such notice to the occupants of all houses, buildings and other structures abutting said street for their information and to state agencies and city departments or other persons that may desire to perform excavation work in said city street.

(b) Within said sixty (60) days every public utility company receiving notice as prescribed herein shall perform such excavation work, subject to the provisions of this article, as may be necessary to install or repair sewers, mains, conduits or other utility installations. In the event any owner of real property abutting said street shall fail within said sixty (60) days to perform such excavation work as may be required to install or repair utility service lines or service connections to the property lines, any and all rights of such owner or his successors in interest to make openings, cuts or excavations in said street shall be forfeited for a period of five (5) years from the date of enactment of said ordinance or resolution. During said five-year period no excavation permit shall be issued to open, cut or excavate in said street unless in the judgment of the City Engineer, Director of Public Services or Designee an emergency exists which makes it necessary that an excavation permit be issued, or when authorized by an order of the city council. Any excavation performed during the 5 year moratorium shall have the following requirements:

1. Street be sawcut full width for 25' each side of trench. Surface shall be reduced 1 ½" and a complete overlay completed.
2. Restripe the centerlines and/or parking spaces.

(c) Every city department or official charged with responsibility for any work that may necessitate any opening, cut or excavation in said street is directed to take appropriate measures to perform such excavation work within said sixty (60) day period so as to avoid the necessity for making any openings, cuts or excavations in the new pavement in said city street during said five (5) year period.

(d) No person, firm, or corporation, including the city's public services department, shall make or cause to be made any opening or excavation in a city street, way or public place until contact has been made with all utilities to locate any existing underground gas, water, telephone or other installations with said street, way or public place.

(e) The developer of new streets offered to the city for acceptance as public streets shall, prior to offering said new streets for acceptance, install all sewers, mains, drains, conduits and other utilities, including utility stubs, to all existing and proposed lots. For a period of five (5) years from the date of final acceptance, no excavation permit shall be issued for openings, cuts or

excavations in said street, except as provided in subsection (b) of this section. (Ord. of 11-2-70, § 35; Ord. of 11-6-72; Ord. of 11-4-74; Ord. of 12-29-80; Ord. of 10-31-88, §§ A, B; Ord. of 7-6-09)

Sec. 29-113.1. Installation and maintenance of lines for gas.

(a) Upon the installation or renewal of a gas or other flammable service line to any building, a shut-off control valve shall be installed in the service line at or near the property line.

(b) When gas or other flammable service to buildings is discontinued, the existing service line for such service shall be terminated at a point outside the building at or near the property line.

(c) Upon the reconstruction of any such street, all gas main lines and building service lines that have been installed for a period of twenty (20) years or more must be replaced in the right of way. (Ord. of 11-6-72; Ord. of 7-6-09)

Sec. 29-114. Preservation of monuments.

The permittee shall not disturb any surface monuments or hubs found on the line of excavation work until ordered to so do by the City Engineer, Director of Public Services or Designee. (Ord. of 11-2-70, § 36; Ord. of 7-6-09)

Sec. 29-115. Inspections.

The City Engineer, Director of Public Services or Designee shall make such inspections as are reasonably necessary in the enforcement of this article. The City Engineer, Director of Public Services or Designee shall have the authority to promulgate and cause to be enforced such rules and regulations as may be reasonably necessary to enforce and carry out the intent of this article.

If the project requires an inspector for the duration of the site work, the permittee shall be responsible for all cost. Inspection charges will be listed on the City of Westbrook Master Fee Schedule. (Ord. of 11-2-70, § 37; Ord. of 7-6-09)

Sec. 29-116. Maintain drawings.

Users of subsurface street space shall maintain accurate drawings, plans, and profiles showing the location and character of all underground structures including abandoned installations. Corrected maps shall be filed with the City Engineer, Director of Public Services or Designee within sixty (60) days after new installations, changes or replacements are made. (Ord. of 11-2-70, § 38; Ord. of 7-6-09)

Sec. 29-117. Article not applicable to city and state work.

The provisions of this article shall not be applicable to any excavation work under the direction of competent city authorities, employees of the city or by any contractor of the city or state performing work for and in behalf of the city or state necessitating openings or excavations in streets. (Ord. of 11-2-70, § 39)

Sec. 29-118. Insurance.

A permittee, other than a public utility company, prior to the commencement of excavation work hereunder, shall furnish the city satisfactory evidence in writing that the permittee has in force and will maintain in force during the performance of the excavation work and the period of the excavation permit public liability insurance of not less than two million dollars (\$2,000,000.00) for any one person and two million dollars (\$2,000,000.00) for any one accident

and property damage insurance of not less than two million dollars (\$2,000,000.00) duly issued by an insurance company authorized to do business in this state. (Ord. of 112-70, § 40; Ord. of 7-6-09)

Sec. 29-119. Liability of city.

This article shall not be construed as, imposing upon the city or any official or employee any liability or responsibility for damages to any person injured by the performance of any excavation work for which an excavation permit is issued hereunder, nor shall the city or any official or employee thereof be deemed to have assumed any such liability or responsibility by reason of inspections authorized hereunder, the issuance of any permit or the approval of any excavation work. (Ord. of 11-2-70, § 41)

Sec. 29-120. Improper, work completed by the city.

If the work or any part thereof provided for in this article shall be unskillfully or improperly done, the City Engineer, Director of Public Services or Designee may forthwith cause the same to be skillfully and properly done and shall keep an account of the expense thereof. In such case, the Permittee in default shall pay to the city all its expenses incurred in correcting such improper work with an additional fifty per cent (50%) added thereto for its default; and thereafter no further permits shall issue to the Permittee until such sum is paid in full to the city. (Ord. of 11-2-70, § 42; Ord. of 7-6-09)

ARTICLE V. DRIVEWAY INSTALLATIONS AND ALTERATIONS

Sec. 29-121. Compliance with state rules and regulations.

All such driveway installations and alterations shall comply with the "Rules and Regulations Relating to Entrances to Highways" as adopted by the state department of transportation under the provisions of Title 23, Maine Revised Statutes, section 704, and the issuance of said permit by the building inspector shall be subject to the approval of the City Engineer, Director of Public Services or Designee to assure compliance with such rules and regulations. (Ord. of 7-8-74; Ord. 7-6-09)

Sec. 29-122. Permits Required.

No person, firm or corporation shall construct, alter or maintain any driveway for entrance or access to any public street or way within the compact or built-up section of the city without first obtaining a written permit from the building inspector; or if outside the compact or built-up section, so-called, and on any state or state-aid highway without a permit from the state department of transportation, as required by state law, Title 23, Maine Revised Statutes, section 704. The city permit fee shall be fixed by the city council pursuant to the Master Fee Schedule. (Ord. of 7-8-74; Ord. of 7-6-09)

Sec. 29-123. Same - Existing driveways exempt; exceptions.

No permit shall be required for any existing driveway unless the grade or location of the same is changed, but if any such driveway is changed in location or grade or is improved or repaved, a permit shall be required. If any existing driveway is changed in degree or kind of use, such as from residential to business, a permit shall be required. (Ord. of 7-8-74)

Sec. 29-124. Same - Prerequisite to issuance of building permit.

No building permit shall be issued for the construction or alteration of any building if the construction project includes the installation or alteration of a driveway for access to the property

without the prior issuance of a permit for such driveway installation or alteration in accordance with the provisions of this article. (Ord. of 7-8-74)

Sec. 29-125. Same—Revocation.

If after the issuance of a permit for the installation or alteration of a driveway, such driveway is not constructed in accordance with said "Rules and Regulations Relating to Entrances to Highways" or if said driveway becomes hazardous to travel along the public street or way as the result of excessive ice or other conditions caused by improper grading, said permit may be revoked by the building inspector upon the recommendation of the City Engineer, Director of Public Services or Designee until the defective conditions are corrected; subject to the property owner's right of appeal to the municipal officers who shall conduct a hearing thereon and may modify or affirm the revocation of said driveway permit or order the reissuance of said permit. (Ord. of 7-8-74; Ord. of 7-6-09)

ARTICLE VI. NON-STORM WATER DISCHARGE

Sec. 29-126. Definitions.

For the purposes of this Ordinance, the terms listed below are defined as follows:

- A. *Clean Water Act.* Clean Water Act means the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the “Clean Water Act”), and any subsequent amendments thereto.
- B. *Discharge.* Discharges means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of Pollutants to waters of the State. Direct discharge or point source means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete, fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which Pollutants are or may be discharged.
- C. *Enforcement Authority.* Enforcement Authority means the person(s) or department authorized under Section 29-128 of this Ordinance to administer and enforce this Ordinance.
- D. *Exempt Person or Discharge.* Exempt Person or Discharge means any Person who is subject to a Multi-Sector General Permit for Industrial Activities, a General Permit for Construction Activity, a General Permit a General Permit for the Discharge of Stormwater from the Maine Department of Transportation and the Maine Turnpike Authority Municipal Separate Storm Sewer Systems, or a General Permit for the Discharge of Storm water from State or Federally owned Authority Municipal Separate Storm Sewer System Facilities; and any Non-Storm Water Discharge permitted under a NPDES permit, waiver, or waste discharge license or order issues to the discharger and administered under the authority of the U.S. Environmental Protection Agency (“EPA”) or the Maine Department of Environmental Protection (“DEP”).
- E. *Industrial Activity.* Industrial Activity means activity or activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).
- F. *Municipal Separate Storm Sewer System or MS4.* Municipal Separate Storm Sewer System or MS4 means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, State agency or Federal agency or other public entity that discharges directly to surface waters of the State.
- G. *National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit.* National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit means a permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.
- H. *Non-Storm Water Discharge.* Non-Storm Water Discharge means any Discharge to an MS4 that is not composed entirely of Storm Water.
- I. *Pollutant.* Pollutant means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological

materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

- J. *Premises*. Premises means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the Municipality from which Discharges in Storm Drainage System are or may be created, initiated, originated or maintained.
- K. *Regulated Small MS4*. Regulated Small MS4 means any Small MS4 regulated by the State of Maine General Permit for the Discharge of Storm Water from Small Municipal Separate Storm Sewer Systems dated June 3, 2003 (General Permit), including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4 located outside a UA that as of the issuance of the General Permit have been designated by the DEP as Regulated Small MS4's.
- L. *Small Municipal Separate Storm Sewer System or Small MS4*. Small Municipal Separate Storm Sewer System, or Small MS4, means any MS4 that is not already covered by the Phase I MS4 Storm Water program including municipally owned or operated storm sewer systems, State or Federally-owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.
- M. *Storm Drainage System*. Storm Drainage System means that Municipality's Regulated Small MS4.
- N. *Storm Water*. Storm Water means any Stormwater runoff, snowmelt runoff, and surface runoff and drainage; Storm Water has the same meaning as Stormwater.
- O. *Urbanized Area (UA)*. Urbanized Area or UA means the areas of the State of Maine so defined by the latest decennial census by the U.S. Bureau of the Census.

Section 29-127. Applicability.

This Ordinance shall apply to all Persons discharging Storm water and/or Non-Storm Water Discharges from any Premises into the Storm Drainage System.

Section 29-128. Responsibility for Administration.

The City Engineer, Public Services Director, and any employee(s) designated by the Mayor is the Enforcement Authority who shall administer, implement, and enforce the provisions of this Ordinance.

Section 29-129. Prohibition of Non-Storm Water Discharges.

- A. *General Prohibition*. Except as allowed or exempted herein, no Person shall create, initiate, originate or maintain a Non-Storm Water Discharge to the Storm Drainage System. Such Non-Storm Water Discharges are prohibited notwithstanding the fact that the Municipality may have approved the connections, drains, or conveyances by which a Person discharges prohibited Non-Storm Water Discharges to the Storm Drainage System.

- B. Allowed Non-Storm Water Discharges. The creation, initiation, origination, and maintenance of the following Non-Storm Water Discharges to the Storm Drainage System are allowed:
1. Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped ground water; uncontaminated flows from foundation drains: air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; and individual residential car washing;
 2. Discharges specified in writing by the Enforcement Authority as being necessary to protect public health and safety; and
 3. Dye testing, with verbal notification to the Enforcement Authority prior to the time of the test.
- C. Exempt Person or Discharge. This Ordinance shall not apply to an Exempt Person or Discharge, except that the Enforcement Authority may request from Exempt Persons and Persons with Exempt Discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the Discharge(s).

Section 29-130. Suspension of Access to the Municipality's Small MS4

The Enforcement Authority may, without prior notice, physically suspend Discharge access to the Storm Drainage System to a Person when such suspension is necessary to stop an actual or threatened Non-Storm Water Discharge to the Storm Drainage System, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the Storm Drainage System, or which may cause the Municipality to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the Discharge to prevent or minimize a Non-Storm Water Discharge to the Storm Drainage System. If the Person fails to comply with a suspension order issued in an emergency, the Enforcement Authority may take such steps as deemed necessary to prevent or minimize damage to the Storm Drainage System, or to minimize danger to persons; provided, however, that in taking such steps the Enforcement Authority may enter upon the Premises that are the source of the actual or threatened Non-Storm Water Discharge to the Storm Drainage System only with the consent of the Premises' owner, occupant, or agent or as otherwise authorized by law.

Section 29-131. Monitoring of Discharges.

In order to determine compliance with this Ordinance, the Enforcement Authority may enter upon and inspect Premises subject to this Ordinance at reasonable hours with the consent of the Premises' owner, occupant or agent, or as otherwise authorized by law, to inspect the Premises and connections thereon to the Storm Drainage System and to conduct monitoring, sampling and testing of the Discharge to the Storm Drainage System.

Section 29-132. Enforcement.

It shall be unlawful for any person to violate any provision of, or fail to comply with any of the requirements of, this Ordinance. Whenever the Enforcement Authority believes that a person has violated this Ordinance, the Enforcement Authority may enforce this Ordinance in accordance with Title 30-A M.R.S.A. Section 4452, as amended from time to time.

A. Notice of Violation. Whenever the Enforcement Authority believes that a Person has violated this Ordinance, the Enforcement Authority may order compliance with this Ordinance by written notice of violation to that Person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

1. The elimination of Non-Storm Water Discharges to the Storm Drainage System, including, but not limited to, disconnection of the Premises from the MS4;
2. The cessation of discharges, practices, or operations in violation of this Ordinance;
3. At the Person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of Non-Storm Water Discharges to the Storm Drainage System and the restoration of any affected property; or
4. The payment of fines, of the Municipality's remediation costs and of the Municipality's reasonable administrative costs and attorney's fees and costs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.

B. Penalties/Fines/Injunctive Relief. Any Person who violates this Ordinance shall be subject to fines, penalties, and orders for injunctive relief and shall be responsible for the Municipality's attorney's fees and costs, all in accordance with Title 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any Person who violates this Ordinance also shall be responsible for any and all fines, penalties, damages, and costs, including, but not limited to attorney's fees and costs incurred by the Municipality for violation of Federal and State environmental laws and regulations caused by or related to that Person's violation of this Ordinance; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

C. Consent Agreement. The Enforcement Authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this Ordinance for the purposes of eliminating violations of this Ordinance and recovering fines, costs and fees without court action.

D. Appeal of Notice of Violation. Any Person receiving a Notice of Violation or suspension notice may appeal the determination of the Enforcement Authority to the Zoning Board of Appeals. The notice of appeal must be received within 30 days from the date of receipt of the Notice of Violation. The Zoning Board of Appeals shall hold a *de novo* hearing on the appeal within 30 days from the date of receipt of the Notice of Appeal. The Zoning Board of Appeals may affirm, reverse or modify the decision of the Enforcement Authority. A suspension under Section 29-130 of this Ordinance remains in

place unless or until lifted by the Zoning Board of Appeals or by a reviewing court. A party aggrieved by the decision of the Zoning Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the Zoning Board of Appeals decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.

- E. **Enforcement Measures.** If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal to the Zoning Board of Appeals, within 45 days of the decision of the Zoning Board of Appeals affirming the Enforcement Authority's decision, then the Enforcement Authority may recommend to the municipal officers that the Municipality's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure. Notwithstanding these requirements, in the event of an emergency situation that presents an immediate threat to public health, safety or welfare or that may result in damage to the Municipality's Storm Drainage System, the Municipality may seek injunctive relief at any time after learning of such emergency situation.
- F. **Ultimate Responsibility of Discharger.** The standards set forth herein are minimum standards; therefore this Ordinance does not intend nor imply that compliance by any Person will ensure that there will be no contamination, pollution, nor unauthorized discharge of Pollutants into waters of the U.S. caused by said Person. This Ordinance shall not create liability on the part of the Municipality, or any officer, agent, or employee thereof for any damages that result from any Person's reliance on this Ordinance or any administrative decision lawfully made hereunder.

Section 29-133. Severability.

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this Ordinance, which shall remain in full force and effect.

Section 29-134. Basis.

The City of Westbrook enacts this Non-Storm Water Discharge Ordinance (the Ordinance) pursuant to Title 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), Title 38 M.R.S.A. § 413 (the Wastewater Discharge Law), 33 U.S.C. § 1251 *et seq.* (the Clean Water Act), and 40 CFR Part 122 (U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System (NPDES)). The Maine Department of Environmental Protection, through its promulgation of the General Permit for the Discharge of Storm water from Small Municipal Separate Storm Sewer Systems dated June 3, 2003, has listed the City of Westbrook as having a Regulated Municipal Separate Storm Sewer System (Small MS4); under this General Permit, and listing as a Regulated Small MS4 necessitates enactment of this Ordinance as part of the Municipality's Storm Water Management Program.

(Ord. of 7-6-09)

Chapter 30

[Subdivision Ordinance¹ deleted; see now Appendix A, Land Use Ordinance]

Chapter 31

TRAFFIC²

- Art. I. [In General](#), §§ 31-1 - 31-24
Art. II. [Operation](#), §§ 31-25 - 31-84
Art. III. [Stopping, Standing and Parking](#), §§ 31-85 - 31-123
Art. IV. [Pedestrians](#), §§ 31-124 - 31-139
Art. V. [Vehicle Towing](#), §§ 31-140 – 31-164
Art. VI. [Parking Scofflaw Ordinance](#), §§ 31-165 – 31-173

ARTICLE I. IN GENERAL

Sec. 31-1. How chapter cited.

This chapter may be known and cited as the "Traffic Ordinance." (Ord. of 7-13-65, § 17-4)

Sec. 31-2. Definitions.

The following words and phrases when used in this chapter shall for the purpose of this chapter have the meanings respectively ascribed to them in this article.

Alley or alleyways. A narrow way between buildings generally giving access to the rear of buildings.

Authorized emergency vehicle. Vehicles of the fire department, police department and such ambulances and emergency vehicles of municipal departments or public service corporations as are designated or authorized by the chief of police.

Bicycle. Every device propelled by human power upon which any person may ride, having two (2) tandem wheels either of which is more than twenty (20) inches in diameter.

Business or residence district. Business or residence shall mean the territory of any municipality contiguous to any way which is built up with structures which are less than one hundred fifty (150) feet apart for a distance of at least one quarter (1/4) of a mile.

Commercial vehicle. Every vehicle designed, maintained or used primarily for the transportation of property.

Controlled-access highway. Every highway, street or roadway in respect to which owner or occupants of abutting lands, and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street or roadway.

¹ State law reference – Municipal Authority to regulate land subdivision, 30-A M.R.S.A. § 4401, et seq.

² State law reference – Municipal authority to regulate vehicles, 30-A M.R.S.A. § 3001.

Crosswalk. (a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalk on opposite sides of the highway measured from the curbs, or in absence of curbs, from the edge of the traversable roadway. (b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

Curb loading zone. A space adjacent to the curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials.

Driver. Every person who drives or is in actual physical control of a vehicle.

Highway or roadway. The entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Holidays. Public holidays, as used in this chapter, are those provided by 4 M.R.S.A. § 1051.

Individual parking space. A portion of the paved surface of the street of sufficient length and depth from the sidewalk curb to accommodate a vehicle to be parked as shall be specified and marked off by the chief of police.

Intersection. The area embraced within the prolongation or connection of the lateral curb lines or, if none, then the lateral boundary lines of the roadways of the two (2) highways which join one another, or approximately at right angles, or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

Motor vehicle. Every vehicle which is self-propelled, including motorcycles.

Official time standard. Whenever certain hours are named herein they shall mean standard time or daylight-saving time as may be in current use in the city.

Official traffic-control devices. All signs, signals, markings and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic.

Park or parking. The standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading of merchandise or passengers.

Pedestrian. Any person afoot.

Person. Every natural person, firm, co partnership, association or corporation.

Police officer. Every officer of the municipal police department or any officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations.

Private roads or driveway. Every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner, but not to other persons.

Publicly owned property. Every parcel of land owned or controlled by any of the departments of the city or any quasi-municipal department.

Railroad. A carrier of persons or property upon cars operated upon stationary rails.

Railroad train. A steam engine, electric or other motor, with or without car coupled thereto, operated upon rails.

Right-of-way. The right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed and proximity as to give rise to danger of collision unless one grants precedence to the other.

Safety zone. The area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

Sidewalk. The portion of a street between the curb lines, on the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.

Stand or standing. The halting of a vehicle, whether occupied or not, otherwise than for the purpose of and while actually engaged in receiving or discharging passengers.

Stop. When required means complete cessation from movement.

Stop or stopping. When prohibited means any halting even momentarily of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the direction of a police officer or traffic-control sign or signal.

Through highway. Every highway or portion thereof on which vehicular traffic from intersecting highways is required by law to yield right-of-way to vehicles on such through highway in obedience to either a stop sign or a yield sign when such signs are erected as provided in this chapter.

Traffic. Pedestrians, ridden or herded animals, vehicles, and other conveyances, either singly or together, while using the highway for purpose of travel.

Traffic-control signal. Any device, whether manually, electrically or mechanically operated, by which is alternately directed to stop and permitted to proceed.

Vehicle. Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks. (Ord. of 7-13-65, §§ 1-1-1-4, 1-7-1-25, 1-27-1-36)

Sec. 31-3. General penalty.

Whenever in this chapter any act is prohibited or is made or declared to be unlawful or a misdemeanor, or whenever in this chapter the doing of an act is required or the failure to do any act is declared to be unlawful or a misdemeanor, where no specific penalty is provided therefor, the violation of such provision of this chapter shall be punished by a fine of not more than the maximum fine found in the Master Fine Schedule attached hereto as Appendix C. All fines shall be recovered on complaint to the use of the city. Each day any violation of any provision of this chapter shall continue shall constitute a separate offense. (Ord. of 3-1-04)

Sec. 31-4. Obedience to chapter required.

It is a civil violation for any person to do any act forbidden, or fail to perform any act required, in this chapter or in the Uniform Traffic Ordinance Schedules attached and incorporated herein, as amended from time to time. (Ord. of 7-13-65, § 3-2)

Sec. 31-5. Obedience to police, fire officials required.

No person shall willfully fail or refuse to comply with any lawful order or direction of a police officer or fire department official. (Ord. of 7-13-65, § 3-3)

Sec. 31-6. Obedience to regulations by public employees.

The provisions of this chapter shall apply to the driver of any vehicle owned by or used in the service of the United States Government, this state, county or city, and it shall be unlawful for any such driver to violate any provisions of this chapter, except as otherwise permitted in this chapter or by state statute. (Ord. of 7-13-65, § 3-6)

Sec. 31-7. Department to maintain records.

The police department shall keep a record of all violations of the traffic ordinances of the city or of the state vehicle laws of which any person has been charged, together with a record of the final disposition of all such illegal offenses. Such record shall be so maintained as to show all types of violations and the total of each. Such record shall accumulate during at least a five (5) year period and from that time on the record shall be maintained complete for at least the most recent five (5) year period. (Ord. of 7-13-65, § 2-3)

Sec. 31-8. Authority of police, fire officials to enforce and require obedience to regulations.

(a) It shall be the duty of the officers of the police department or such officers as are assigned by the chief of police to enforce all the traffic laws of the city and all of the state laws applicable to traffic in the city.

(b) Officers of the police department or such officers as are assigned by the chief of police are hereby authorized to direct all traffic by voice, hand or signal in conformance with the traffic laws provided that, in the event of a fire or other emergency, or to expedite traffic or to safeguard pedestrians, officers of the police department may direct traffic as conditions may require, notwithstanding the provisions of the traffic laws.

(c) Officers of the fire department, when at the scene of a fire, may direct or assist the police in directing traffic thereat or in the immediate vicinity. (Ord. of 7-13-65, § 3-1)

Sec. 31-9. Person propelling pushcarts, riding or driving animals to obey.

Every person propelling any pushcart or riding an animal upon a roadway, and every person driving any animal-drawn vehicle, shall be subject to the provisions of this chapter applicable to the driver of any vehicle, except those provisions of this chapter which, by their very nature, can have no application. (Ord. of 7-13-65, § 3-4)

Sec. 31-10. Police department authorized to suggest measures to prevent accidents.

Whenever accidents become numerous at any particular location, the police department shall conduct studies of such accidents and determine remedial measures. (Ord. of 7-13-65, § 2-4)

Sec. 31-11. Immediate notice of accidents.

The driver of a vehicle involved in an accident resulting in injuries to or the death of any person or property damage to the estimated amount of one hundred dollars (\$100.00) or more shall immediately by the quickest means of communication give notice of such accident to the police department if such accident occurs within the city. (Ord. of 7-13-65, § 3-9)

Sec. 31-12. True name to be given subsequent to, notice to appear.

It shall be unlawful for any person when given notice by any police officer or other authorized person to appear to answer for an offense against any provisions of this chapter to *give* other than his true name and true place of his residence or address, upon the request of such police officer or other authorized person. (Ord. of 7-13-65, § 3-10)

Sec. 31-13. Permit for parades, processions.

No funeral procession or parade containing one hundred (100) or more persons or twenty-five (25) or more vehicles, except the forces of the United States Army or Navy, the military forces of this state and the forces of the police and fire departments, shall occupy, march or proceed along any street except in accordance with a permit issued by the chief of police and such other regulations as are set forth which may apply. (Ord. of 7-13-65, § 8-6)

Sec. 31-14. Clinging to vehicles.

No person riding upon any bicycle, coaster, roller skates, sled or toy vehicle shall attach the same or himself to any vehicle upon a roadway.¹ (Ord. of 7-13-65, § 8-11)

Sec. 31-15, Vehicle tow-away procedures - Applicability.

The procedures herein set forth in sections 31-46 through 31-18 shall be utilized in all cases where a vehicle is towed from any public way or public property or from any private property at the request or direction of the city. (Ord. of 9-15-80)

Sec. 31-16. Same - Notice to owner required.

A notice shall be sent to the registered owner of the vehicle towed, by regular mail, postage prepaid, during the next business day following the tow.

The notice shall state the following:

- (a) The registration number and a brief description of the vehicle;
- (b) The name and address of the person or company performing the tow;
- (c) The location of the vehicle;
- (d) The ordinance, statute or regulation violation which led to the tow;
- (e) The towing fee and any accruing storage charges;
- (f) That a hearing as provided herein is available if the owner feels that the tow was unauthorized or otherwise improper. (Ord. of 9-15-80)

Sec. 31-17. Hearing provided.

A person whose vehicle has been towed at the request or direction of the city may request that a hearing be held to determine the validity of the tow. The hearing will be held by the mayor or his representative within seventy-two (72) hours of a request for said hearing.

The petitioner shall be given notice of the time and location of the hearing and shall be allowed to present any evidence, testimony or documentation in support of his or her position and shall have the right to question any witnesses appearing in opposition to his or her position. The hearing shall be conducted as informally as possible consistent with due process.

The mayor or his designated representative shall consider any relevant evidence or testimony and may uphold the validity of the tow-away. If the tow is not upheld, the city shall pay the full cost of the tow and any accrued storage charges assessed by the tow operator up to and including the day upon which the hearing is held. (Ord. of 9-15-80)

Sec. 31-18. Same - Appeal.

¹ **State law reference** – For similar provisions, see 29-A M.R.S.A. § 2063.

Any person aggrieved by a decision of the mayor or his designated representative may appeal to the city council in writing within ten (10) days of receipt of that decision in writing. The council may uphold or reverse the mayor's or his representative's decision. If the decision is reversed, the city shall pay the full towing fee and any accrued storage charges up to and including the day upon which the hearing before the mayor or his representative was held. (Ord. of 9-15-80)

Sec. 31-19. Payment for accident cleanup.

Notwithstanding the other provisions of this chapter, the driver of any vehicle involved in an accident resulting in property damage shall be responsible, jointly and severally, for paying the actual costs of major cleanup performed by city personnel during their normal off-duty time. (Ord. of 4-7-86)

Secs. 31-20 - 31-24. Reserved.

ARTICLE II. OPERATION

Sec. 31-25. Authority to install traffic-control devices.

The director of public works under the direction of the chief of police shall place and maintain traffic-control signs, signals and devices when and as required under the traffic ordinances of the city to make effective the provisions of such ordinances, and may place and maintain such additional traffic-control devices as he may deem necessary to regulate traffic under the traffic ordinances of the city or under state law or to guide or warn traffic.¹ (Ord. of 7-13-65, § 4-1)

Sec. 31-26. Manual and specifications for traffic-control devices.

All traffic-control signs, signals and devices shall conform to the specifications approved by the resolutions adopted by the legislative body of the city. All signs and signals required hereunder for a particular purpose shall, so far as practicable, be uniform as to type and location throughout the city. All traffic-control devices so erected and not inconsistent with the provisions of state law or this chapter shall be official traffic-control devices. (Ord. of 7-13-65, § 4-2)

Sec. 31-27. Obedience required to control devices.

The driver of any vehicle shall obey the instructions of any official traffic-control device applicable thereto placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter. (Ord. of 7-13-65, § 4-3)

Sec. 31-28. Improperly placed, illegible, missing traffic-control devices; enforcement of violation.

No provision of this chapter for which official traffic-control devices are required shall be enforced against an alleged violator, if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that official traffic-control devices are required, such section shall be effective even though no devices are erected or in place. (Ord. of 7-13-65, § 4-4)

¹ **State law reference** – Municipalities may by ordinance regulate traffic by means of signal devices, etc., 29-A M.R.S.A. § 557.

Sec. 31-29. Presumption of legality of traffic-control devices.

(a) Whenever official traffic-control devices are placed in position, approximately conforming with the requirements of this chapter, such devices shall be presumed to have been so placed by the official act or direction of lawful authority, unless the contrary shall be established by competent evidence.

(b) Any official traffic-control device placed pursuant to the provisions of this chapter and purporting to conform to the lawful requirements pertaining to such devices, shall be presumed to comply with the requirements of this chapter, unless the contrary shall be established by competent evidence. (Ord. of 7-13-65, § 4-4.1)

Sec. 31-30. Schedule of traffic-control light devices.

The schedule of traffic-control light devices, being particularly Schedule III, is on file in the city clerk's office and is in no way affected by the adoption of this Code.

Sec. 31-31. Traffic-control signal legend.¹

Whenever traffic is controlled by traffic-control signals exhibiting different colored lights, or colored lighted arrows, successively one at the time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word legend, and such lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

(a) *Green indication.*

- (1) Vehicular traffic facing a circular green signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time such signal is exhibited.
- (2) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow, or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within the adjacent crosswalk and to other traffic lawfully using the intersection.
- (3) Unless otherwise directed by a pedestrian-control signal as provided in section 31-32, pedestrians facing a green signal, except when the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

(b) *Steady yellow indication.*

- (1) Vehicular traffic facing a steady yellow signal is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.
- (2) Pedestrians facing a steady yellow signal, unless otherwise directed by a pedestrian-control signal as provided in section 31-32, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown and no pedestrian shall then start to cross the roadway.

¹ **State law reference** – For similar provisions, see 29-A M.R.S.A. § 2057.

(c) *Steady red indication.*

(1) Vehicular traffic facing a steady red signal alone shall stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown.

(2) Unless otherwise directed by a pedestrian-control signal as provided in section 31-32, pedestrians facing a steady red signal alone shall not enter the roadway.

(d) *At other than intersections; where stop made.* In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section shall be applicable except as to those provisions which, by their nature, can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of any such sign or marking, the stop shall be made at the signal.

(Ord. of 7-13-65, § 4-5)

Sec. 31-32. Pedestrian-control signals.¹

Whenever special pedestrian-control signals exhibiting the words "Walk" or "Don't Walk" are in place such signals shall indicate as follows:

(a) *Walk.* Pedestrians facing such signals may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of all vehicles.

(b) *Don't walk.* No pedestrian shall start to cross the roadway in the direction of such signal, but any pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the don't walk signal is showing. (Ord. of 7-13-65, § 4-6)

Sec. 31-33. Flashing signal legend.²

(a) Whenever an illuminated flashing red or yellow signal is used in a traffic sign or signal, it shall require obedience by vehicular traffic as follows:

(1) *Flashing red (stop signal).* When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or if none, then before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign.

(2) *Flashing yellow (caution signal).* When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such signal only with caution.

(b) This section shall not apply at railroad grade crossings. Conduct of drivers of vehicles approaching railroad grade crossings shall be governed by the rules as set forth in section 31-54. (Ord. of 7-13-65, § 4-7)

Sec. 31-34. Lane-direction-control signal.³

¹ **State law references** – For similar provisions, see 29-A M.R.S.A. § 2056; municipal authority to regulate pedestrian traffic, 30-A M.R.S.A. § 3001.

² **State law reference** – For similar provisions, see 29-A M.R.S.A. § 2056.

³ **State law reference** – For similar provisions, see 29-A M.R.S.A. § 2057.

When lane-direction-control signals are placed over the individual lanes of a street, vehicular traffic may travel in any lane over which a green signal *is* shown, but shall not enter or travel in any lane over which a red signal is shown. (Ord. of 7-13-65, § 4-7.1)

Sec. 31-35. Unauthorized, illegal signs, signals, markings.¹

(a) No person shall place, maintain or display upon or in view of any street an unauthorized sign, signal, marking or device which purports to be, or is an imitation of, or resembles an official traffic-control device or railroad sign or signal, or which attempts to direct the movement of traffic, or which hides from view or interferes with the effectiveness of any official traffic-control device or any railroad *sign* or signal.

(b) No person shall place or maintain nor shall any public authority permit upon any street any traffic sign or signal bearing thereon any commercial advertising.

(c) Every such prohibited sign, signal or marking is hereby declared to be a public nuisance and the authority having jurisdiction over the street is hereby empowered to remove the same or cause it to be removed without notice. (Ord. of 7-13-65, § 4-8; Ord. of 12-1-86)

Sec. 31-36. Interference with traffic-control devices, railroad signs, signals.

No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down or remove any official traffic-control device or any railroad sign or signal or any inscription, shield or insignia thereon, or any other part thereof.² (Ord. of 7-13-65, § 4-9)

Sec. 31-37. Driving at immoderate speeds prohibited.

No person shall ride or drive at an unusual or immoderate rate of speed through any of the principal streets of the city, whereby any person may be endangered or unreasonably inconvenienced.³ (1942 Rev. Code, Ch. XVI, § 3)

Sec. 31-38. Schedule of speed regulations.

The schedule of speed regulations as authorized by the Maine Department of Transportation, being particularly Schedule XII, is on file in the city clerk's office. (Ord. of 7-13-65; Ord. of 6-10-69; Ord. of 12/21/87; Ord. of 6/20/88; Ord. of 1/23/89; Ord. of 8/7/89)

Sec. 31-39. Authority to declare, mark play streets.

The chief of police, with the approval of the public safety committee of the council, shall have the authority to temporarily declare any street or part thereof as a play street and to place appropriate signs or devices in the roadway indicating and helping to protect the same. (Ord. of 7-13-65, § 4-10; Ord. of 8-16-65)

Sec. 31-40. Driving on play streets.

Whenever authorized signs are erected indicating any street or part thereof as a play street, no person shall drive a vehicle upon any such street or portion thereof, except drivers of vehicles having business or whose residences are within such closed area, and then any such driver shall exercise the greatest care in driving upon any such street or portion thereof. (Ord. of 7-13-65, § 4-11)

Sec. 31-41. Authority to designate, maintain crosswalks, safety zones.¹

¹ **State law reference** – For similar provisions, see 29-A M.R.S.A. § 2107.

² **State law reference** – For similar provisions, see 29-A M.R.S.A. § 2107.

³ **State law reference** – For similar provisions, see 29-A M.R.S.A. § 2074.

The chief of police, with the approval of the public safety committee of the council, is hereby authorized to do the following:

- (a) Designate and maintain, by appropriate devices, marks or lines upon the surface of the streets, crosswalks at intersections where in his opinion there is particular danger to pedestrians crossing the roadway, and at such other places as he may deem necessary.
- (b) Establish safety zones of such kind and character and at such places as he may deem necessary for the protection of pedestrians. (Ord. of 7-13-65, § 4-12)

Sec. 31-42. Authority to mark traffic lanes; operation within lanes.

(a) The director of public works under the direction of the chief of police is hereby authorized to mark traffic lanes upon the roadway of any street or highway where a regular alignment of traffic is necessary.

(b) Where such traffic lanes have been marked, it shall be unlawful for the operator of any vehicle to fail or refuse to keep such vehicle within the boundaries of any such lane except when lawfully passing another vehicle or preparatory to making a lawful turning movement. (Ord. of 7-13-65, § 4-13)

Sec. 31-43. Authority to designate temporary one-way streets.

(a) In the event of an emergency requiring one-way traffic for the avoidance of traffic congestion which would be prejudicial to the health, safety and welfare of the inhabitants of the city or property located therein, the chief of police shall have the authority to designate streets or parts thereof as subject only to one-way traffic. Such designation shall be effective only if suitable signs be conspicuously placed on or about the entrances to and exits from such designated areas and such designation and signs shall be removed at the termination of such emergency.

(b) In addition to emergency conditions, the following occasions shall be proper ones for application of the above power to designate temporary one-way traffic in areas affected by such occasions, such designations and signs to be removed after such conditions cease to exist:

- (1) Parades.
- (2) Church services.
- (3) Athletic events.
- (4) Any event, meeting or occasion attracting or likely to attract a large number of persons.
- (5) Excavations or other repairs to streets. (Ord. of 7-13-65, § 4-14)

Sec. 31-44. Schedule of one-way streets.

The schedule of one-way streets, being particularly Schedule IV, is on file in the city clerk's office and is in no way affected by the adoption of this Code.

Sec. 31-45. Duty to place one-way street, alley signs; required locations.

Whenever any ordinance of this city designates any one-way street or alley, the director of public works under the direction of the chief of police shall place and maintain signs giving notice thereof, and no such regulation shall be effective unless such signs are in place. Signs

¹ **State law reference** – Municipal authority to establish crosswalks and safety zones, 30-A M.R.S.A. § 3001.

indicating the direction of lawful traffic movement shall be placed at every intersection where movement of traffic in the opposite direction is prohibited. (Ord. of 7-13-65, § 6-1)

Sec. 31-46. Obedience required to one-way signs.

Upon those streets and parts of streets and in those alleys specified by the city, vehicular traffic shall move only in the indicated direction when signs indicating the direction of traffic are erected and maintained at every intersection where movement in the opposite direction is prohibited.¹ (Ord. of 7-13-65, § 6-2)

Sec. 31-47. Chief's authority to restrict direction of movement during certain periods.

(a) The chief of police is hereby authorized to determine and designate streets, parts of streets or specific lanes thereon upon which vehicular traffic shall proceed in one (1) direction during one period and the opposite direction during another period of the day and shall place and maintain appropriate markings, signs, barriers or other devices to give notice thereof. The chief may erect signs temporarily designating lanes to be used by traffic moving in a particular direction, regardless of the center line of the roadway.

(b) It shall be unlawful for any person to operate any vehicle in violation of such markings, signs, barriers or other devices so placed in accordance with this section. (Ord. of 7-13-65, § 6-3)

Sec. 31-48. Duty to place signs at through streets.

Whenever any ordinance of this city designates and describes a through street, it shall be the duty of the director of public works under the direction of the chief of police to place and maintain a stop sign or on the basis of an engineering and traffic investigation at any intersection a yield sign, on each and every street intersecting such through street unless traffic at any such intersection is controlled at all times by traffic-control signals, provided, however, that at the intersection of two (2) such through streets or at the intersection of a through street and a heavy traffic street not so designated, stop signs shall be erected at the approaches of either of such streets as may be determined by the chief of police upon the basis of an engineering and traffic study and upon the approval of the public safety committee of the council. (Ord. of 7-13-65, § 7-2)

Sec. 31-49. Schedules of stop, yield signs.

The schedules of stop and yield signs, being particularly Schedules I and II, are on file in the city clerk's office and are in no way affected by the provisions of this Code.

Sec. 31-50. Duty upon approaching yield, stop signs.²

(a) The driver of a vehicle approaching a yield sign, if required for safety to stop, shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway.

(b) Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop *sign* shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the

¹ State law reference – One way roadways, 29-A M.R.S.A. § 2059.

² State law reference – For similar provisions, see 29-A M.R.S.A. § 2057.

driver has a view of approaching traffic on the intersecting roadway before entering the intersection. (Ord. of 7-13-65, § 7-3)

Sec. 31-51. Duty upon entering stop intersection.

Except when directed to proceed by a police officer or a traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop as required by section 31-50 and after having stopped shall yield the right-of-way to any vehicle which has entered the intersection from another highway or which is approaching so closely on such highway as to constitute an immediate hazard during the time when such driver is moving across or within the intersection.¹ (Ord. of 7-13-65, § 7-4)

Sec. 31-52. Duty upon entering yield intersection.

The driver of a vehicle approaching a yield sign shall, in obedience to such sign, slow down to a speed reasonable for the existing conditions and shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection; provided, however, that if such a driver is involved in a collision with a vehicle in the intersection, after driving past a yield sign without stopping, such collision shall be deemed prima facie evidence of his failure to yield right-of-way. (Ord. of 7-13-65, § 7-5)

Sec. 31-53. Emerging from alley, driveway or building.

The driver of a vehicle within a business or residence district emerging from an alley, driveway or building shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across any alleyway or driveway, and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision and upon entering the roadway shall yield the right-of-way to all vehicles approaching on such roadway.² (Ord. of 7-13-65, § 7-6)

Sec. 31-54. Duties upon approach of railroad crossings.

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of such vehicle shall stop within fifty (50) feet but not less than fifteen (15) feet from the nearest rail of such railroad and shall not proceed until he can do so safely. The foregoing requirements shall apply when:

- (1) A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train.
- (2) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train.
- (3) A railroad train approaching within approximately fifteen hundred (1,500) feet of the highway crossing emits a signal audible from such distance and such railroad train, by reason of its speed or nearness of such crossing, is an immediate hazard.
- (4) An approaching railroad train is plainly visible and is in hazardous proximity to such crossing.

¹ State law reference – For similar provisions, see 29-A M.R.S.A. § 2057.

² State law reference – For similar provisions, see 29-A M.R.S.A. § 2056.

(b) No person shall drive any vehicle through, around or under any crossing gate or barrier at a railroad crossing while such gate or barrier is closed or is being opened or closed. (Ord. of 7-13-65, § 7-8)

Sec. 31-55. Authority to place turn markers at intersections; obedience required.

(a) The director of public works under the direction of the chief of police is authorized to place markers, buttons, or signs within or adjacent to intersections indicating the course to be traveled by vehicles turning at such intersections, and such course to be traveled as so indicated may conform to or be other than as prescribed by law or ordinance.

(b) When authorized markers, buttons or other indications are placed within an intersection indicating the course to be traveled by vehicles turning thereat, no driver of a vehicle shall disobey the directions of such indications. (Ord. of 7-13-65, § 5-2)

Sec. 31-56. Authority to place restricted turn signs at intersections.

After the council has determined those intersections at which drivers of vehicles shall not make a right, left or "U" turn, the director of public works under the direction of the chief of police shall place proper signs at such intersections. The making of such turns may be prohibited between certain hours of any day and permitted at other hours, in which event the same shall be plainly indicated on the signs or they may be removed when such turns are permitted. (Ord. of 7-13-65, § 5-3)

Sec. 31-57. Schedule of prohibited, limited left, turns.

The schedule of left turns that are prohibited and limited, being particularly Schedule X, is on file in the city clerk's office and is in no way affected by the adoption of this Code.

Sec. 31-58. Obedience to restrictive turn signs required.

Whenever authorized signs are erected indicating that no right, left or "U" turn is permitted, no driver of a vehicle shall disobey the directions of any such sign. (Ord. of 7-13-65, § 5-4)

Sec. 31-59. Required position, method of turning at intersections.¹

The driver of a vehicle intending to turn at an intersection shall do as follows:

- (a) *Right turns.* Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.
- (b) *Left turns on two-way roadways.* At any intersection where traffic is permitted to move in both directions on each roadway entering the intersection, an approach for a left turn shall be made in that portion of the right half of the roadway nearest the center line thereof and by passing to the right of such center line where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the center line of the roadway being entered. Whenever practicable, the left turn shall be made in that portion of the intersection to the left of the center of the intersection.
- (c) *Left turns on other than two-way roadways.* At any intersection where traffic is restricted to one (1) direction on one (1) or more of the roadways, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection, the left turn shall be made so as to leave the

¹ **State law reference** – For similar provisions, see 29-A M.R.S.A. § 2060.

intersection, as nearly as practicable in the left-hand lane lawfully available to traffic moving in such direction upon the roadway being entered. (Ord. of 7-13-65, § 5-1)

Sec. 31-60. Turning around restricted.

The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction upon any street in a business district and shall not upon any other street so turn a vehicle unless such movement can be made in safety and without interfering with other traffic.¹ (Ord. of 7-13-65, § 5-5)

Sec. 31-61. Obstructing traffic at intersection, crosswalk.

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indication to proceed. (Ord. of 7-13-65, § 7-7)

Sec. 31-62. Controlled-access roads; entrances, exits regulated.

No person shall drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established by public authority.² (Ord. of 7-13-65, § 8-12)

Sec. 31-63. Driving on sidewalks.

The driver of a vehicle shall not drive within any sidewalk area, except at a permanent or temporary driveway. (Ord. of 7-13-65, § 8-7)

Sec. 31-64. Limitations on backing.

The driver of a vehicle shall not back such vehicle unless such movement can be made with reasonable safety and without interfering with other traffic. (Ord. of 7-13-65, § 8-8)

Sec. 31-65. Privileges of authorized emergency vehicles.³

(a) The driver of an authorized emergency vehicle, when responding to an emergency call, or when in the pursuit of an actual or suspected violator of the law, or when responding to, but not upon returning from, a fire alarm, may exercise the privileges set forth in this section, but subjected to the conditions herein stated.

(b) The driver on an authorized emergency vehicle may:

- (1) Park or stand, irrespective of the provisions of this chapter.
- (2) Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.
- (3) Exceed the maximum speed limits so long as he does not endanger life or property.
- (4) Disregard regulations governing direction of movement or turning in specified directions.

(c) The exemptions herein granted to an authorized emergency vehicle shall apply only when the driver of any such vehicle while in motion sounds an audible signal by bell, siren or exhaust whistle as may be reasonably necessary, and when the vehicle is equipped with at least one (1)

¹ **State law reference** – Turning around regulated, 29-A M.R.S.A. § 2072.

² **State law reference** – For similar provisions, see 29-A M.R.S.A. § 2108.

³ **State law reference** – Emergency vehicles required to have bell, siren, lights, 29-A M.R.S.A. § 2054.

lighted lamp displaying a blue light visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of such vehicle, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a blue light visible from in front of the vehicle.

(d) The foregoing provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequence of his reckless disregard of the safety of others. (Ord. of 7-13-65, § 3-7)

Sec. 31-66. Duty on approach of authorized emergency vehicles.¹

(a) Upon the immediate approach of an authorized emergency vehicle making use of audible and visual signals meeting the requirements of the laws of this state, or of a police vehicle properly and lawfully making use of an audible signal, the following shall apply:

- (1) The driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the street clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.

(b) This section shall not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway. (Ord. of 7-13-65, § 3-8)

Sec. 31-67. Following, parking near fire apparatus.²

The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred (500) feet or drive into or park such vehicle within the block where such fire apparatus has stopped in answer to a fire alarm. (Ord. of 7-13-65, § 8-1)

Sec. 31-68. Driving over fire hose.³

No vehicle shall be driven over any unprotected hose of the fire department when laid down on any street, private way or track, to be used at any fire or alarm of fire, without the consent of the fire department official in command. (Ord. of 7-13-65, § 8-2)

Sec. 31-69. Driving through funeral or other processions.

No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while they are in motion and when such vehicles are conspicuously designated as required in this chapter. This provision shall not apply at intersections where traffic is controlled by traffic-control signals or police officers. (Ord. of 7-13-65, § 8-3)

Sec. 31-70. Driving in procession regulated.

Each driver in a funeral or other procession shall drive as near to the right-hand edge of the street as practicable and shall follow the vehicle ahead as close as is practicable and safe. (Ord. of 7-13-65, § 8-4)

¹ **State law reference** – For similar provisions, see 29-A M.R.S.A. § 2054.

² **State law reference** – For similar provisions, see 29-A M.R.S.A. § 2068.

³ **State law reference** – For similar provisions, see 29-A M.R.S.A. § 2065.

Sec. 31-71. Vehicles in procession to be identified as such.

A funeral composed of a procession of vehicles shall be identified as such by the display upon the outside of each vehicle of a pennant or other identifying insignia or by such method as may be determined and designated by the police department. (Ord. of 7-13-65, § 8-5)

Sec. 31-72. Commercial vehicles prohibited from using certain streets, exception.

When *signs* are erected giving notice thereof, no person shall operate at any time, any commercial vehicle upon any of the streets or parts of streets described in the appropriate schedule which is on file in the city clerk's office, except that such vehicles may be operated thereon for the purpose of delivering or picking up materials or merchandise, and then only by entering such street at the intersection nearest the destination of the vehicle and proceeding thereon no farther than the nearest intersection thereafter. (Ord. of 7-13-65, § 15-1)

Sec. 31-73. Use of coasters, skates, etc., restricted.

No person upon roller skates, or riding in or by means of any coaster, toy vehicle or similar device, shall go upon any roadway except while crossing a street on a crosswalk and when so crossing such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. This section shall not apply upon any street while set aside as a play street. (Ord. of 7-13-65, § 3-5)

Sec. 31-74. Riding on motorcycles.¹

A person operating a motorcycle shall ride only upon the permanent and regular seat attached thereto and such operator shall not carry any other person nor shall any other person ride on a motorcycle unless such motorcycle is designed to carry more than one (1) person, in which event a passenger may ride upon the permanent and regular seat if designed for two (2) persons, or upon another seat *Emily* attached to the rear or side of the operator. (Ord. of 7-13-65, § 8-10)

Sec. 31-75. Regulation of motorized scooters, motorized skateboards and toy vehicles.

It shall be unlawful to operate a motorized scooter or toy vehicle (defined to mean a mechanical conveyance that is ineligible to be registered as a motor vehicle for highway use, that an operator can stand or sit upon or in, to include motorized scooters, motorized skateboards, go-karts, mini-bikes and pocket motorcycles), on a public way, sidewalk or boardwalk within the city. Anyone operating in violation of this section commits a traffic infraction covered by the penalty provisions set forth in sec. 31-3.

Any police officer or other duly authorized law enforcement officer within the city, when satisfied that a person under the age of 18 had operated any motorized scooter, motorized skateboard or toy vehicle in violation of this section, may impound the vehicle for a period not to exceed 5 days. The release of said conveyance shall be to the violator's parent or legal guardian. Any individual 18 years or older who violates this section commits a traffic infraction covered by the penalty set forth in sec. 31-3.

Sec. 31-76. Skateboards prohibited on roadways, sidewalks and other public places.

(a) No person riding upon a skateboard in a public place shall travel within 100 feet of a notice posted conspicuously in the public place that forbids

¹ **State law reference** – For similar provisions, see 29-A M.R.S.A. § 2062.

the use of skateboards. Persons found in violation of this section shall be subject to the penalty provisions set forth below.

(b) No person may ride upon a skateboard, roller skates, or in-line roller blades in or on any municipally owned or controlled property, including parking lots, posted conspicuously to prohibit such riding.

(c) No person riding upon a skateboard, roller skates, or in-line roller blades shall ride on or upon any public way in such a manner as to interfere with any pedestrian thereon.

(d) A person riding upon a skateboard, roller skateboard, roller skates, or in-line roller blades shall observe all traffic vehicular signs, stop at all stop signs, and observe all traffic rules and regulations applicable thereto and cross the street only when safe to do so, without interference with the normal flow of vehicular traffic.

(e) All persons riding upon a skateboard, roller skates, or in-line roller blades on a public roadway shall ride single file.

(f) No person riding upon a skateboard, roller skates, or in-line roller blades may attach the same or himself/herself to any vehicle upon a public way.

(g) Penalties.

(1) *Persons 17 years or older:* a person who is 17 years of age or older, and commits a violation of this section, may be issued a civil summons that will order the violator to appear at Maine District Court. If found to have violated this ordinance, the violator will be fined not more than \$50.00 for the first offense, and not more than \$100.00 for a second and subsequent offenses.

(2) *Persons under 17 years:* a person who is under 17 years of age, and commits a violation of this section, shall, on the first offense, be given a warning, unless the area is posted conspicuously prohibiting such conduct; on a first offense, where the area is posted conspicuously to forbid the use of skateboards, roller blades, in line skates, or any other similar device, a police officer may impound the skateboard, roller blades, in line skates or other similar device for a period of three (3) days. On a second or subsequent offense, the skateboard roller blades, in line skates or other similar device shall be impounded for five (5) days, and ten (10) days for any subsequent offense. A juvenile who is charged with a violation of this section may request a hearing with the police department's juvenile officer. Such hearing shall be scheduled for the juvenile officer's next working day. (Ord. of 11-03-08)

Sec. 31-77 - 31-84. Reserved.

ARTICLE III. STOPPING, STANDING AND PARKING

Sec. 31-85. Required close to curb.

Except as otherwise provided in this article, every vehicle stopped or parked upon a street where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within twelve (12) inches of the right-hand curb. (Ord. of 7-13-65, § 11-1)

Sec. 31-86. Authority to mark streets for angle parking; when angle parking prohibited.¹

(a) The director of public works, under the direction of the chief of police, shall mark or sign those streets where angle parking has been permitted by the council, but such angle parking shall not be indicated upon any federal-aid or state highway within the city unless the state highway commission has determined by resolution or order, entered in its minutes, that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic.

(b) Angle parking shall not be indicated or permitted at any place where passing traffic would thereby be caused or required to drive upon the left side of the street. (Ord. of 7-13-65, § 11-2)

Sec. 31-87. Obedience to angle-parking signs.

On those streets which have been signed or marked by the chief of police for angle parking, no person shall park or stand a vehicle other than at the angle to the curb or edge of the roadway indicated by such signs or markings. (Ord. of 7-13-65, § 11-3)

Sec. 31-88. Permits for loading, unloading at angle to curb.

(a) The chief of police is authorized to issue special permits to permit the backing of a vehicle to the curb for the purpose of loading or unloading merchandise or materials subject to the terms and conditions of such permit. Such permits may be issued either to the owner or lessee of real property or to the owner of the vehicle and shall grant to such person the privilege as therein stated and authorized herein.

(b) It shall be unlawful for any permittee or other person to violate any of the special terms or conditions of any such permit. (Ord. of 7-13-65, § 11-4)

Sec. 31-89. Lamps on parked vehicles.²

(a) Whenever a vehicle is lawfully parked upon a street or highway during the hours between one-half (1/2) hour after sunset and one-half (1/2) hour before sunrise, and in the event there is sufficient light to reveal any person or object within a distance of five hundred (500) feet upon such street or highway, no lights need be displayed upon such parked vehicle.

(b) Whenever a vehicle is parked or stopped upon a roadway or shoulder adjacent thereto, whether attended or unattended, during the hours between one-half (1/2) hour after sunset and one-half (1/2) hour before sunrise and there is not sufficient light to reveal any person or object within a distance of five hundred (500) feet upon such highway, such vehicle so parked or stopped shall be equipped with one (1) or more lamps meeting the following requirements: At least one (1) lamp shall display a white or amber light visible from a distance of five hundred (500) feet to the front of the vehicle, and the same lamp or at least one (1) other lamp shall display a red light visible from a distance of five hundred (500) feet to the rear of the vehicle, and the location of such lamp or lamps shall always be such that at least one (1) lamp or combination of lamps meeting the requirements of this section is installed as near as practicable

¹ **State law reference** – Municipal authority to lay out public parking places, 23 M.R.S.A. § 2802.

² **State law reference** – For similar provisions, see 29-A M.R.S.A. § 2067.

to the side of the vehicle which is closest to passing traffic. The foregoing provisions shall not apply to a motor-driven cycle.

(c) Any lighted head lamps upon a parked vehicle shall be depressed or dimmed. (Ord. of 7-13-65, § 11-5)

Sec. 31-90. Prohibited in certain places.

(A) Except when necessary to avoid conflict with other traffic, or in compliance with law or the directions of a police officer or official traffic-control device, no person shall:

- (1) Stop, stand, or park a vehicle in the following places:
 - (a) On the roadway side of any vehicle stopped or parked at the edge or curb of a street.
 - (b) On a sidewalk.
 - (c) Within an intersection.
 - (d) On a crosswalk.
 - (e) Between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless the chief of police indicates a different length by signs or markings.
 - (f) Alongside or opposite any street excavation or obstruction when stopping, standing, or parking would obstruct traffic.
 - (g) Upon any bridge or other elevated structure upon a highway or within a highway tunnel.
 - (h) On any railroad tracks.
 - (i) At any place where official signs prohibit stopping.
- (2) Stand or park a vehicle, whether occupied or not, except momentarily to pick up or discharge a passenger or passengers:
 - (a) In front of a public or private driveway.
 - (b) Within fifteen (15) feet of a fire hydrant.
 - (c) Within twenty-five (25) feet of the near corner of the curb at an intersection, except where otherwise designated by the chief of police and the public safety committee of the council.
 - (d) Within thirty (30) feet upon the approach of any flashing signal, stop sign, or traffic-control signal located at the side of a roadway.
 - (e) Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of such entrance when properly signposted.
 - (f) At any place where official signs prohibit standing.
- (3) Park a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged or unloading merchandise or passengers:
 - (a) Within fifty (50) feet of the nearest rail of a railroad crossing.

(b) At any place where official signs prohibit parking.

(B) No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such a distance as is unlawful.

(C) Any vehicle parked in a parking space designated as a handicapped parking space, that does not bear a special registration plate or placard issued under Title 29, Section 252, or similar plate issued by another state, shall be cited for a penalty in accordance with the Master Fine Schedule attached hereto as Appendix C. (Ord. of 7-13-65, § 12-1; Ord. of 8-16-65; Ord. of 7-6-82)

Sec. 31-91. Prohibited and limited parking schedules.

The prohibited parking and limited parking schedules, being particularly Schedules V and VI respectively, are on file in the city clerk's office and are in no way affected by the adoption of this Code.

Sec. 31-92. Parking on street not to obstruct traffic.

No person shall park any vehicle upon a street in such a manner or under such conditions as to leave available less than ten (10) feet of the width of the roadway for free movement of vehicular traffic.¹ (Ord. of 7-13-65, § 12-2)

Sec. 31-93. Parking in alleys not to obstruct.

No person shall park a vehicle within an alley in such a manner or under such conditions as to leave available less than ten (10) feet of the width of the street for the free movement of vehicular traffic, and no person shall stop, stand or park a vehicle within an alley in such position as to block the driveway entrance to any abutting property. (Ord. of 7-13-65, § 12-3)

Sec. 31-94. Parking to advertise for sale, wash, grease or repair prohibited; emergency exception.

No person shall park a vehicle upon any roadway for the principal purpose of :

(a) Displaying such vehicle for sale.

(b) Washing, greasing or repairing such vehicle except repairs necessary by an emergency.
(Ord. of 7-13-65, § 12-5)

Sec. 31-95. Authority to erect signs prohibiting parking adjacent to schools.

(a) Upon the passage of an ordinance prohibiting parking upon either or both sides of any street adjacent to any school property, the director of public works under the direction of the chief of police shall erect signs indicating such prohibition.

(b) When official signs are erected indicating no parking upon either side of a street adjacent to any school property as authorized herein, no person shall park a vehicle in any such designated place. (Ord. of 7-13-65, § 12-6)

Sec. 31-96. Authorized to erect signs prohibiting parking on narrow streets.

The director of public works under the direction of the chief of police is hereby authorized to erect signs indicating no parking upon any street when the width of the roadway does not exceed twenty (20) feet, or upon one side of a street indicated by such signs when the width of the roadway does not exceed thirty (30) feet.

¹ **State law reference** – For similar provisions, see 29-A M.R.S.A. § 2068.

When official signs prohibiting parking are erected upon narrow streets as authorized herein, no person shall park a vehicle upon any such street in violation of any such sign. (Ord. of 7-13-65, § 12-7)

Sec. 31-97. Authority to erect no parking signs on left side of one-way streets.

The director of public works under the direction of the chief of police, is authorized to erect signs upon the left-hand side of any one-way street to prohibit the standing or parking of vehicles, and when such signs are in place, no person shall stand or park a vehicle upon such left-hand side in violation of any such sign. (Ord. of 7-13-65, § 12-8)

Sec. 31-98. Chief to determine, designate probable hazardous areas, prohibit use.

The chief of police is hereby authorized to determine and designate by proper signs places not exceeding one hundred (100) feet in length in which the stopping, standing or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic.

When official signs are erected at hazardous or congested places as authorized herein, no person shall stop, stand or park a vehicle in any such designated place. (Ord. of 7-13-65, § 12-9; Ord. of 8-16-65)

Sec. 31-99. Use of passenger curb loading zones.

No person shall stop, or park a vehicle for any purpose or period of time other than for the expeditious loading or unloading of passengers in any place marked as a passenger curb loading zone during hours when the regulations applicable to such curb loading zone are effective, and then only for a period not to exceed three (3) minutes. (Ord. of 7-13-65, § 13-1)

Sec. 31-100. Use of freight curb loading zone.

No person shall stop, stand, or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivery or pickup and loading of materials in any place marked as a freight curb loading zone during hours when the provisions applicable to such zones are in effect. In no case shall the stop for loading and unloading of materials exceed thirty (30) minutes. (Ord. of 7-13-65, § 13-2)

Sec. 31-101. Schedule of loading zones.

The schedule of loading zones, being particularly Schedule VIII, is on file in the city clerk's office and is in no way affected by the adoption of this Code.

Sec. 31-102. Council to designate public carrier stops, stands; signs required.

The council shall establish bus stops, bus stands, taxicab stands and stands for other passenger common-carrier motor vehicles on such public streets in such places and in such number as they shall determine to be the greatest benefit and convenience to the public, and every such bus stop, bus stand, taxicab stand or other stand shall be designated by appropriate signs.¹ (Ord. of 7-13-65, § 13-3)

Sec. 31-103. Schedule of bus stops, taxi zones.

The schedules of bus stops and taxi zones, being particularly Schedules VIII and IX, are on file in the city clerk's office and are in no way affected by the adoption of this Code.

¹ **State law reference** – Municipal authority to regulate all vehicles in public ways, routes and standing places of vehicles for hire, 30-A M.R.S.A. § 3001.

Sec. 31-104. Stopping, standing, parking of buses, taxicabs regulated.

(a) The operator of a bus shall not stand or park such vehicle upon any street or at any place other than a bus stand so designated as provided herein.

(b) The operator of a bus shall not stop such vehicle upon any street at any place for the purpose of loading or unloading passengers or their baggage other than at a bus stop, bus stand or passenger loading zone so designated as provided herein, except in case of an emergency.

(c) The operator of a bus shall enter a bus stop, bus stand or passenger loading zone on a public street in such a manner that the bus when stopped to load or unload passengers or baggage shall be in a position with the right front wheel of such vehicle not further than eighteen (18) inches from the curb and the bus approximately parallel to the curb so as not to unduly impede the movement of other vehicular traffic.

(d) The operator of a taxicab shall not stand or park such vehicle upon any street at any place other than in a taxicab stand so designated as provided herein. This provision shall not prevent the operator of a taxicab from temporarily stopping in accordance with other stopping or parking regulations at any place for the purpose of and while actually engaged in the expeditious loading or unloading of passengers. (Ord. of 7-13-65, § 13-4)

Sec. 31-105. Restricted use of bus, taxicab stands.

No person shall stop, stand or park a vehicle other than a bus in a bus stop or other than a hackney in a hackney stand, or other than a taxicab in a taxicab stand, when any such stop or stand has been officially designated and appropriately signed, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while actually engaged in loading or unloading passengers when such stopping does not interfere with any bus, hackney or taxicab waiting to enter or about to enter such zone. (Ord. of 7-13-65, § 13-5)

Sec. 31-106. Restricted or prohibited on certain streets and publicly owned property.¹

(a) The provisions of this section prohibiting the standing or parking shall apply at all times or at those times specified by ordinance or as indicated on official signs except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic-control devices.

(b) When signs are erected giving notice thereof, no person shall park a vehicle upon those streets or between those hours designated by city ordinance.

(c) When signs are erected in each location giving notice thereof, no person shall stop, stand or park a vehicle within the city between those hours specified by ordinance of any day except Sundays and public holidays.

(d) Department boards, if none, department heads of the various departments and quasi-municipal departments may submit to the council restrictions on parking and operation of vehicles on property under their control, and when approved by the council they shall be enforced when proper signs are posted. Those restrictions on vehicle movement and parking shall be established by ordinance.

(e) Whenever by this or any other ordinance of this city any parking time limit is imposed or parking is prohibited on designated streets, it shall be the duty of the director of public works under the direction of the chief of police to erect appropriate signs giving notice thereof and no

¹ **State law reference** – For similar provisions, see 30-A M.R.S.A. § 3001.

such regulations shall be effective unless such signs are erected and in place at the time of any alleged offense.

(f) When a vehicle is unlawfully parked it shall be prima facie evidence of the unlawful parking of such vehicle by the person in whose name such vehicle is registered. (Ord. of 7-13-65, §§ 14-14-8)

Sec. 31-107. Schedule of restricted, prohibited parking on publicly owned property.

The schedule of restricted and prohibited parking on publicly owned property, being particularly Schedule XIII, is on file in the city clerk's office and is in no way affected by the adoption of this Code.

Sec. 31-108. Winter parking regulated; obstructing snow removal; evidence of violation.

(a) Parking vehicles upon any street in the city for more than one (1) hour between the hours of 12:00 a.m. and 6:00 a.m. each day during the period commencing November fifteenth of each year and ending April fifteenth of the following year is hereby prohibited. Provided, however, during snow storm emergencies, as declared by the public works director, all on-street parking shall be prohibited. The city shall make reasonable efforts to publicize such an emergency.

(b) If a vehicle parked in violation of this section is obstructing snow removal, it will be hauled away at the owner's expense.

(c) It shall be unlawful for any person to cause, allow, permit or suffer any vehicle registered in the name of or operated by such person to be parked as prohibited by this section.

(d) The fact that a vehicle is parked in violation of the provisions of this section shall be prima facie evidence of the unlawful parking of such vehicle by the registered owner thereof (Ord. of 3-22-60; Ord. of 7-13-65, § 12-4; Ord. of 1-21-85; Ord. of 2-4-91)

Sec. 31-109. Abandoning of vehicle; removal.

No person shall abandon any vehicle of any kind on any street of the city.

The chief of police is hereby authorized to remove at the owner's expense any such abandoned vehicle from any street and to store such vehicle at the owner's expense. For the purpose of this chapter, a vehicle shall be deemed abandoned after it has been parked on any street in Westbrook for a period of over twenty-four (24) hours. (Ord. of 7-13-65, § 3-11)

Sec. 31-110. Opening and closing vehicle doors.

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open on the side of a motor vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers. (Ord. of 7-13-65, § 8-9)

Sec. 31-111. Fees for parking violations.

The schedule of fees for parking violations is set forth in the Master Fine Schedule attached hereto as Appendix C.

(Ord. of 5-1-78; Ord. of 6-7-82; Ord. of 3-3-86; Ord. of 9-25-95; Ord. of 4-13-98)

Sec. 31-112. Penalty.

Any person violating any parking provision of this chapter shall be subject to the general penalty provisions in section 31-3; however, such person may elect, in lieu of such penalty, to

pay the sum for each type of parking violation referred to in section 31-107. Such payment shall in no event be construed to be an amount which an offender may voluntarily contribute towards the cost and expense alternative method of regulating and administering traffic law violations.

If such payment is not made at the police station within forty-eight (48) hours after notice of such violation is served, by traffic ticket or otherwise, this alternative method is not available or applicable, and the penalty provided in section 31-3 shall be imposed. (Ord. of 7-13-65, § 16-2)

Sec. 31-113. Chief's authority to waive payment for nonresidents.

The chief of police is authorized to waive payment on any parking violation ticket issued to a nonresident when in the opinion of the chief such violation is due to lack of knowledge of such violated provision of this chapter; provided, however, that this benefit shall not be extended to any violation deemed by the chief to be deliberate, continued or flagrant, and provided that in no event shall this benefit extend a violation of the provision prohibiting parking in violation of a fire hydrant area. (Ord. of 7-13-65, § 16-3)

Sec. 31-114. Parking limitation for commercial vehicles.

(a) No commercial vehicle in excess of ten thousand pounds (10,000) gross weight shall be allowed to stop, stand or otherwise park upon any street in excess of two (2) hours, except when in active use for the loading or unloading of merchandise or materials, or for the construction or reconstruction of said street.

(b) The fact that such a commercial vehicle is parked in violation of the provisions of this section shall be prima facie evidence of the unlawful parking of such vehicle by the registered owner thereof. (Ord. of 12-16-74)

Sec. 31-115. Fire lanes - Established.

Fire lanes are established for the purpose of promoting the public health, safety, and welfare by recognizing that there exist and will in the future exist buildings and other areas within the city, within which and to which the public will be invited, served or housed. These buildings or other areas must be provided prompt adequate emergency services including access by firefighters and fire-fighting equipment and other emergency personnel and equipment in order to accomplish said purposes and effect the saving of life and property in emergency situations. (Ord. of 7-12-82)

Sec. 31-116. Same - "Fire lane" and "parking area" defined.

(a) A "fire lane" is defined for the purposes of this article as a designated unobstructed passageway at least twenty (20) feet in width with an outside turning radius of fifty (50) feet and constructed and maintained in a manner to permit free passage of fire apparatus and other emergency equipment and personnel from a public way to all necessary areas, regardless of season of year or weather conditions, around buildings, in areas or in developments or subdivisions as may be required elsewhere in this article.

(b) "Parking area," as defined in this article, means lots, areas or other accommodations for the parking of motor vehicles off the street, alley or other way; which said lots, areas or other accommodations are available for use by the public either with or without charge. (Ord. of 7-12-82)

Sec. 31-117. Same - Applicability.

The provisions of this article sections 31-115 through 31-121 shall, in order to accomplish the stated purpose, be applicable to all proposed and existing developments, subdivisions, buildings and other premises which are included within the following:

- (a) Subdivisions as defined in Appendix A, the Land Use Ordinances;
- (b) Any proposed construction requiring site plan review under Appendix A, the Land Use Ordinances;
- (c) Any nonresidential development not requiring subdivision approval or site plan review under Appendix A, the Land Use Ordinances;
- (d) All schools, whether public or private;
- (e) Hospitals;
- (f) Convalescent homes, rest homes and/or nursing homes;
- (g) In addition to the foregoing, all other places of public assembly used for gathering together fifty (50) or more persons. (Ord. of 7-12-82)

Sec. 31-118. Same—Location.

(a) Each application for residential or nonresidential subdivision approval and each application for site plan review submitted to the planning board shall be reviewed by the chief of the fire department. The fire chief shall review each such application to determine the location of such fire lanes as are necessary under this article and report his findings, recommendations and suggested designations of fire lanes to the planning board in writing; which findings, recommendations and suggested designations of fire lanes shall be made a part of the record of proceedings before the planning board on each such subdivision or site plan review application. In such cases, the decision of the planning board shall govern the requirements and designation of said fire lanes.

(b) In any application for a building permit, occupancy or change of use permit not requiring subdivision or site plan review and approval but otherwise included within section 31-117 above, the building inspector shall notify the fire chief of the application for permit and the fire chief shall designate directly to the owner, owners or agent of the premises for which permit application is made the location of required fire lanes.

(c) Within existing developments and premises to which this article is applicable, the fire chief shall designate fire lanes by written order and shall notify in writing both the planning board and the owner, owners or agents of such development or premises by certified mail of such designation and of any specific requirements for compliance with this article and shall publish notice of such establishment of such fire lanes once in a newspaper having general circulation within the city. The fire chief shall file one copy of any order of designation of any such fire lanes with the city clerk. Any person aggrieved by such order may file with the clerk, within fifteen (15) days after the date of the receipt of such order, written notice of appeal, setting forth therein reasons for aggrievement. A public hearing shall be held by the municipal officers, after which they may affirm, modify or rescind such order within thirty (30) days of the public hearing. They shall notify the fire chief, as may be applicable, by written communication of any and all action taken relative to the establishment of a fire lane. (Ord. of 7-12-82)

Sec. 31-119. Same - Maintenance and identification.

(a) Fire lanes established under this article shall be kept free of ice and snow and rubbish containers or other obstructions. The owner, owners, agent or occupant of any premises to which this article is applicable shall cause to be erected, installed and maintained at their own expense, permanent, adequate signed bearing the words "FIRE LANE—NO PARKING—VEHICLES WILL BE TOWED AT OWNER'S EXPENSE," in or adjacent to said fire lane. Such owner, owners, agents or occupants shall cause such other and further designations as are reasonably required by the fire chief to warn persons to keep said fire lanes unobstructed. Failure to maintain a fire lane in accordance with this section shall render the owner, owners, agent or occupant of said development liable to a fine in accordance with the general penalty provision of this Code, with each continuing day of such violation constituting a separate offense.

(b) Notice of establishment of fire lanes shall prescribe a reasonable time for compliance. If compliance is not obtained within said time, then such owner, owners or agents shall be subject to a fine in accordance with the general penalty provision of this Code. Each day following such specified time for compliance shall constitute a new and separate violation. (Ord. of 7-12-82)

Sec. 31-120. Same - Parking prohibited.

(a) No person shall park or permit to stand a motor vehicle in any fire lane established in accordance with this article, except when actually picking up or discharging passengers or actively engaged in loading or unloading a motor vehicle.

(b) Whenever any vehicle shall be found parked in violation of the regulations as established above, any police officer may attach to such vehicle a notice to the owner or operator thereof that such vehicle has been parked in violation of the regulations. Such owner or operator shall pay to the city the sum set forth in Master Fine Schedule, attached hereto as Appendix C, payment of which shall be due within five (5) business days of the issuance of the notice of said violation. Payment as stated above to the designated authority as stated on said parking violation notice shall be in lieu of a court appearance. The registered owner of said motor vehicle shall be presumed to be the operator of such vehicle. Any motor vehicle found parked or standing in a fire lane that has been established in accordance with this article, in addition to the foregoing, may be towed upon the direction of a police officer, to any public or private parking facility and all expense of such towing, and any subsequent storage shall be borne by the registered owner or operator of such vehicle, in accordance with procedure set forth in section 31-16 through 31-18 of this Code. (Ord. of 7-12-82)

Sec. 31-121. Same - Table of location.

Each fire lane designated under this article shall be particularly set forth in Schedule XIII, on file in the city clerk's office. (Ord. of 7-12-82)

Secs. 31-122 - 31-123. Reserved.

ARTICLE IV. PEDESTRIANS

Sec. 31-124. Subject to traffic-control signals.

Pedestrians shall be subject to traffic-control signals as heretofore declared in sections 22-31 and 22-32 of this chapter, but at all other places pedestrians shall be granted those rights and be subject to the restrictions stated in this article.¹ (Ord. of 7-13-65, § 9-1)

Sec. 31-125. Right-of-way at crosswalks.¹

¹ **State law reference** – Applicability of signal legend to pedestrians, 29-A M.R.S.A. § 2057.

(a) When traffic-control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the street within a crosswalk when the pedestrian is upon the half of the street upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the street as to be in danger.

(b) No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.

(c) Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any vehicle approaching from the rear shall not overtake and pass such stopped vehicle. (Ord. of 7-13-65, § 9-2)

Sec. 31-126. To use right half of crosswalk.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks. (Ord. of 7-13-65, § 9-3)

Sec. 31-127. Crossing at right angles.

No pedestrian shall cross a street at any place other than by a route at right angles to the curb or by the shortest route to the opposite curb except in a crosswalk. (Ord. of 7-13-65, § 9-4)

Sec. 31-128. Duty to yield.²

(a) Every pedestrian crossing a street at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the street.

(b) The foregoing rules in this section have no application under the conditions stated in section 22-129 when pedestrians are prohibited from crossing at certain designated places. (Ord. of 7-13-65, § 9-5)

Sec. 31-129. When use of crosswalks required.

(a) Between adjacent intersections at which traffic-control signals are in operation, pedestrians shall not cross at any place except in a crosswalk.

(b) No pedestrian shall cross a street other than in crosswalk in the central traffic district.

(c) No pedestrian shall cross a street intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements. (Ord. of 7-13-65, § 9-6)

Sec. 31-130. Passing gates, barriers at railroad crossings.

No pedestrian shall pass through, around, over, or under any crossing gate or barrier at a railroad grade crossing or bridge while such gate or barrier is closed or is being opened or closed. (Ord. of 7-13-65, § 9-7)

Sec. 31-131. Walking along roadways.³

¹ **State law reference** – For similar provisions, see 29-A M.R.S.A. § 2056.

² **State law reference** – For similar provisions, see 29-A M.R.S.A. § 2056.

³ **State law reference** – For similar provisions, see 29-A M.R.S.A. § 2056.

(a) Where sidewalks are provided, it shall be unlawful for any pedestrian to walk along and upon any adjacent street.

(b) Where sidewalks are not provided, any pedestrian walking along and upon a highway shall, when practicable, walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction. (Ord. of 7-13-65, § 9-8)

Sec. 31-132. Soliciting rides or business.¹

(a) No person shall stand in a roadway for the purpose of soliciting a ride, employment, or business from the occupant of any vehicle.

(b) No person shall stand on or in proximity to a street or highway for the purpose of soliciting the watching or guarding of any vehicle while parked or about to be parked on a street. (Ord. of 7-13-65, § 9-9)

Sec. 31-133. Drivers to exercise care.

Every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any street and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway. (Ord. of 7-13-65, § 9-10)

Sec. 31-134. Pedestrian right-of-way on Main Street crosswalks.

(a) Pedestrians shall have the right-of-way when crossing Main Street within the four (4) designated crosswalks located between Ash Street and Mechanic Street. However, no pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield the right-of-way.

(b) The drivers of all vehicles shall yield the right-of-way to pedestrians when crossing said Main Street within said designated crosswalks and, whenever any vehicle is stopped at said crosswalks to permit a pedestrian to cross the street, the driver of any other vehicle approaching from the rear shall not overtake and pass such a stopped vehicle.

(c) The chief of police is hereby authorized to cause appropriate signs to be erected at such locations as he deems necessary to warn vehicular traffic that it must yield the right-of-way to pedestrian traffic within said crosswalks. (Ord. of 5-1-78)

Secs. 31-135 – 31-139. Reserved.

ARTICLE V. VEHICLE TOWING

(Vehicle Towing deleted. See [Chapter 20, Licenses & Permits](#)).

ARTICLE VI. PARKING SCOFFLAW ORDINANCE

Sec. 31-165. Purposes.

The purpose of this article is to improve the enforcement of the city parking ordinances; to improve vehicular circulation and relieve congestion; and to discourage habitual violators. (Ord. of 9-25-95)

Sec. 31-166. Definitions.

¹ **State law reference** – For similar provisions, see 29-A M.R.S.A. §§ 2109-2110.

(a) *Boot.* A device consisting of metal clamps or jaws and a padlocking device, which, when attached to the wheel of a motor vehicle, results in immobilization.

(b) *Outstanding parking ticket.* Notice of violation of any city parking ordinance for which the owner of the offending vehicle has finally determined to be in violation by reason of default or otherwise; and the resultant fine or waiver fee established pursuant to 30-A M.R.S.A. Sec. 3009 has not been paid.

(c) *Delinquency notice.* A notice sent to the registered owner of the vehicle for which a parking ticket has been issued and has not been paid within the prescribed period of time. (Ord. of 9-2-95; Ord. of 11-5-01)

Sec. 31-167. Parking scofflaw.

Any vehicle which accumulates four (4) or more outstanding parking tickets after the effective date of this ordinance, for which there has been neither payment or waiver of fees, nor issuance of court process shall be subject to the following.

- (a) If it is located upon any public way or any way to which the public has free access within the city, any police officer shall have the option of immobilizing it in place or of removing and storing the vehicle pursuant to the towing provisions of this chapter. The registered owner shall be responsible for paying all towing, storage and release fees.
- (b) Any police officer may issue a civil summons to the registered owner of such vehicle upon verifying unpaid parking fines. The adjudication of the violation shall be for the full amount of all unpaid fines, together with the amount set forth in Section 31-1 of this chapter and costs of court. (Ord. of 9-2-95; Ord. of 3-1-04)

Sec. 31-168. Notice.

No immobilization or towing of a vehicle pursuant to this article shall take place until a delinquency notice on the fourth outstanding parking ticket has been issued for at least thirty (30) days. The notice shall state that a booting and/or towing order will soon be carried out against the subject motor vehicle. The owner shall have reasonable opportunity, during the notice period, to question or contest that order with the chief of police. (Ord. of 9-2-95)

Sec. 31-169. Immobilization and removal.

If, after the notice period provided in Section 31-168, the owner has not paid all outstanding parking tickets or presented satisfactory evidence to the police department or the finance department that their records relating to the registered owner's failure to pay are in error, the offending vehicle may thereafter be immediately immobilized or towed. As an alternative to booting or towing the vehicle, the registered owner may be issued a civil summons for outstanding parking tickets. If a boot is placed on the vehicle, it shall constitute notice to the owner that such vehicle has been immobilized pursuant to this article. A notice shall be placed in a conspicuous manner on such vehicle sufficient to warn any individual that such vehicle has been immobilized by the police department; that any attempt to move such vehicle is unlawful and may result in damage thereto; and shall state the requirements for release as herein set forth. The police officer requesting the towing of a vehicle under this article shall notify the dispatcher of the location of removal, which shall be recorded for the use of the chief of police and finance director. If a booted vehicle has not been released within forty-eight (48) hours after immobilization, it may be towed to a storage area, and the owner shall be liable for the additional costs of towing and storage. When a vehicle is towed pursuant to this section, notice of the

removal shall be sent by the police department to the vehicle owner by first-class mail within seventy-two (72) hours whenever possible, indicating the place of storage, the reason for impoundment, and the conditions for release. No notice is required when the owner contacts the department within seventy-two (72) hours of removal. (Ord. of 9-2-95; Ord. of 11-5-01; Ord. of 3-1-04)

Sec. 31-170. Release of vehicles.

Any police officer or towing company having custody of a vehicle pursuant to the provisions of this article shall not release it until the individual requesting its release presents satisfactory evidence of his right to possession and signs a receipt therefore, and:

- (a) The finance director or chief of police certifies that the waiver fees for all outstanding parking tickets after date of adoption of this ordinance have been paid as well as all charges for the removal of the vehicle boot and/or the costs of towing and storage, as established by ordinance; or
- (b) The finance director certifies that a bond has been posted equal to the amount of the waiver fees for all outstanding traffic tickets which should have been remitted and the other charges set forth hereinabove; or
- (c) The chief of police certifies that such person has both demonstrated that he is unable to pay the accumulated waiver fees by reason of poverty, having provided satisfactory proof of such status, and has accepted service of process initiating a court proceeding to determine his liability for the alleged parking violations, and such person pays all the booting and/or towing and storage charges. (Ord. of 9-2-95)

Sec. 31-171. Bond.

Whenever any person requests the right to post bond pursuant to Section 31-170(b), such bond shall be given in cash and a receipt given therefore. Such bond money shall be refunded in the amount of the waiver fee for each alleged parking violation upon acceptance by that person of service of process initiating a court proceeding to determine his liability for the prescribed penalty for such alleged violations. Any bond shall be forfeited unless the person posting it requests and accepts service of process from the chief of police within thirty (30) days of posting, unless prevented from doing so by actions or inaction of the city. (Ord. of 9-2-95; Ord. of 11-5-01)

Sec. 31-172. Refund of booting and towing charges.

Whenever any person obtains a determination from a court of competent jurisdiction that the vehicle was not parked in violation of the parking ordinance at the time it was immobilized or impounded pursuant to this article, such person shall be reimbursed for the charges of immobilization and/or for towing and storage costs if paid, and if such charges have not been paid they shall be paid or cancelled promptly by the city. (Ord. of 9-2-95; Ord. of 11-5-01)

Sec. 31-173. Violation.

It shall be unlawful for any person to tamper with or attempt to remove any immobilizing device attached to a vehicle, or to attempt to transport such booted vehicle without authorization of the chief of police, or to obstruct or attempt to prevent the removal of a vehicle as provided in this article. Such violation shall be subject to the General Penalty set forth in section 1-8. (Ord. of 9-2-95)

Chapter 32

TREES

Sec. 32-1. Short title.

The chapter shall be known and may be cited as the "Municipal Tree Ordinance of the Municipality of Westbrook". (Ord. of 12-11-72, § 1)

Sec. 32-2. Definitions.

For the purpose of this chapter the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word shall is mandatory and not merely directory.

Forestry department is the designated department of the municipality under whose jurisdiction park and/or street trees fall.

Municipal arborist is the designated official of the Municipality of Westbrook assigned to carry out the enforcement of this chapter.

Person is any person, firm, partnership, association, corporation, company, or organization of any kind.

Property line shall mean the outer edge of a street or highway right-of-way.

Property owner shall mean the person owning such property as shown by the tax maps, City of Westbrook, unless proof to the contrary is available.

Public places shall include all grounds owned by the Municipality of Westbrook.

Public trees shall include all shade and ornamental trees now or hereafter growing on any street or any public areas or overhanging said street or public areas.

Street or highway means the entire width of every public way or right-of-way when any part thereof is open to the use of the public, as a matter of right.

Trees:

- (a) Large trees are designated as those attaining a height of forty-five (45) feet or more.
- (b) Medium trees are designated as those attaining a height of thirty (30) to forty-five (45) feet.
- (c) Small trees are designated as those attaining a height of twenty (20) to thirty (30) feet.

Treelawn is that part of a street or highway, not covered by sidewalk or other paving, lying between the property line and that portion of the street or highway usually used for vehicular traffic. (Ord. of 12-11-72, § 2)

Sec. 32-3. Duties of recreation-conservation commission.

The duties of the recreation-conservation commission shall be as follows:

- (a) To study the problems and determine the needs of the city, in connection with its tree planting program.
- (b) To recommend to the city council the type and kinds of trees to be planted upon such municipal streets or parts of municipal streets or in parks as is designated.

- (c) To assist the properly constituted officials and citizens of the municipality in the dissemination of news and information regarding the selection, planting, and maintenance of trees within the corporate limits, whether the same be on private or public property, and to make such recommendations from time to time to the city council as to desirable legislation concerning the tree program and activities for the municipality.
- (d) To provide regular and special public meetings at which the subject of trees, insofar as it relates to the municipality, may be discussed. (Ord. of 12-11-72, § 3)

Sec. 32-4. Qualifications of municipal arborist.

The municipal arborist shall be a person skilled and trained in the arts and sciences of municipal arboriculture and shall hold a college degree or its equivalent in arboriculture, ornamental or landscape horticulture, urban forestry, or other closely related field. In Maine where there is a state arborist examining board, he shall have passed the state examination and shall hold a current regular arborist's license from the State of Maine. (Ord. of 12-11-72, § 4)

Sec. 32-5. General duties of arborist; alternate arborist.

The municipal arborist shall have the authority to promulgate the rules and regulations of the arboricultural specifications and standards of practice governing the planting, maintenance, removal, fertilization, pruning, and bracing of trees on the streets or other public sites in the municipality and shall direct, regulate, and control the planting, maintenance, and removal of all trees growing now or hereafter in any public area of the Municipality of Westbrook. He shall cause the provision of this chapter to be enforced. In his absence these duties shall be the responsibility of a qualified alternate designated by the recreation-conservation commission. (Ord. of 12-11-72, § 5)

Sec. 32-6. Authority and responsibilities of arborist generally.

(a) *Insure safety and preserve aesthetics.* The municipal arborist shall have the authority and jurisdiction of regulating the planting, maintenance, and removal of public trees on streets and other publicly-owned property to insure safety or preserve the aesthetics of such public sites.

(b) *Supervise and inspect.* The municipal arborist shall have the authority and it shall be his duty to supervise or inspect all work done under a permit issued in accordance with the terms of this chapter.

(c) *Affix conditions to permits.* The municipal arborist shall have the authority to affix reasonable conditions to the granting of a permit in accordance with the terms of this chapter.

(d) *Formulate master street tree plan; contents, effect of plan.* The municipal arborist shall have the authority to formulate a master street tree plan with the advice and approval of the recreation-conservation commission. The master street tree plan shall specify the species of trees to be planted on each of the streets or other public sites of the municipality. From and after the effective date of the master street tree plan, or any amendment thereof, all planting shall conform thereto.

(1) *Consideration of utility and environmental factors.* The municipal arborist shall consider all existing and future utility and environmental factors when recommending a specific species for each of the streets and other public sites of the municipality.

(2) *Amendments.* The municipal arborist, with the approval of the recreation-conservation commission, shall have the authority to amend or add to the master street tree plan, at any time that circumstances make it advisable. (Ord. of 12-11-72, § 6)

Sec. 32-7. Permits generally.

(a) Planting, maintenance or removal generally.

- (1) No person shall plant, spray, fertilize, preserve, prune, remove, cut above ground, or otherwise disturb any tree on any street or municipally owned property without first filing an application and procuring a permit from the municipal arborist or otherwise specified municipal authority. The person receiving the permit shall abide by the arboricultural specifications and standards of practice adopted by the municipal arborist. In emergency situations, such as storm damage to trees, requiring immediate pruning or removal, the work may be done; however, the arborist must be informed of such action within two (2) days thereafter.
- (2) Application for permits must be made at the office of the municipal arborist not less than forty-eight (48) hours in advance of the time the work is to be done.
- (3) Standards of issuance. The municipal arborist shall issue the permit provided for herein if, in his judgment, the proposed work is desirable and the proposed method and workmanship thereof are of a satisfactory nature. Any permit granted shall contain a definite date of expiration and the work shall be completed in the time allowed on the permit and in the manner as therein described. Any permit shall be void if its terms are violated.
- (4) Notice of completion shall be given within five (5) days to the municipal arborist for his inspection.

(b) Planting:

- (1) Application data. The application required herein shall state the number of trees to be set out; the location, grade, species, cultivar or variety of each tree; the method of planting; and such other information as the municipal arborist shall find reasonably necessary to a fair determination of whether a permit should be issued.
- (2) Improper planting. Whenever any tree shall be planted or set out in conflict with the provisions of this section, it shall be lawful for the municipal arborist to remove or cause removal of the same, and the exact cost thereof shall be assessed to the owner as provided by law in the case of special assessments.

(c) Maintenance:

- (1) Application data. The application required herein shall state the number and kinds of trees to be sprayed, fertilized, pruned, or otherwise preserved; the kind of treatment to be administered; the composition of the spray material to be applied; and such other information as the municipal arborist shall find reasonably necessary to a fair determination of whether a permit should be issued.

(d) Removal, replanting and replacement:

- (1) Whenever it is necessary to remove a tree or trees from a treelawn in connection with the paving of a sidewalk, or the paving or widening of the portion of a street or highway used for vehicular traffic, the municipality shall replant such trees or replace them. Provided that conditions prevent planting on treelawns, this requirement will be satisfied if any equivalent number of trees of the same size and species as provided for in the arboricultural specifications are planted on the adjoining property.

- (2) No person or property owner shall remove a tree from the treelawn for the purpose of construction, or for any other reason, without first filing an application and procuring a permit from the municipal arborist, and without replacing the removed tree or trees in accordance with the adopted arboricultural specifications. Such replacement shall meet the standards of size, species, and placement as provided for in a permit issued by the municipal arborist. The person or property owner shall bear the cost of removal and replacement of all trees removed. (Ord. of 12-11-72, § 7)

Sec. 32-8. Abuse, mutilation, unauthorized removal of public trees.

Unless specifically authorized by the municipal arborist, no person shall intentionally damage, cut, carve, transplant or remove any tree; attach any rope, wire, nails, advertising posters, or other contrivance to any tree, allow any gaseous liquid, or solid substance which is harmful to such trees to come in contact with them; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree. (Ord. of 12-11-72, § 8)

Sec. 32-9. Interference with municipal arborist.

No person shall hinder, prevent, delay, or interfere with the municipal arborist or any of his assistants while engaged in carrying out the execution or enforcement of this chapter; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the municipality. (Ord. of 12-11-72, § 9)

Sec. 32-10. Protection of public trees.

(a) All trees on any street or other publicly owned property near any excavation or construction of any building, structure, or street work, shall be guarded with a good substantial fence, frame, or box not less than four (4) feet high and eight (8) feet square, or at a distance in feet from the tree equal to the diameter of the trunk in inches D.B.H., whichever is greater, and all building material, dirt, or other debris shall be kept outside the barrier.

(b) No person shall excavate any ditches, tunnels, trenches, or lay any drive within a radius of ten (10) feet from any public tree without first obtaining a written permit from the municipal arborist. (Ord. of 12-11-72, § 10)

Sec. 32-11. Impeding free passage of water, air and fertilizer to roots of trees.

No person shall deposit, place, store, or maintain upon any public place of the municipality any stone, brick, sand, concrete, or other materials which may impede the free passage of water, air, and fertilizer to the roots of any tree growing therein, except by written permit of the municipal arborist. (Ord. of 12-11-72, § 11)

Sec. 32-12. Authority of municipal arborist to promulgate rules and regulations of the arboricultural specifications and standards of practice.

The municipal arborist shall have the authority to promulgate the rules and regulations of the Arboricultural Specifications and Standards of Practice governing the planting, maintenance, removal, fertilization, pruning, and bracing of trees on the streets of other public sites in the municipality. (Ord. of 12-11-72, § 11)

Chapter 33

VEHICLES FOR HIRE

(Vehicles for Hire deleted. See Taxicabs under [Chapter 20, Licenses & Permits](#)).

Chapter 34

WEAPONS AND EXPLOSIVES

Art. I. [In General](#), §§ 34-1 – 34-13

Art. II. [Use of Blasting Agents](#), §§ 34-14 - 34-24

ARTICLE I. IN GENERAL

Sec. 34-1. No hunting allowed; permit to discharge firearms required.

No person shall hunt with the use of a firearm within the city limits. Neither shall any person, without a permit from the chief of police, fire or discharge any gun, fowling piece, cannon, or firearm within the municipal boundaries, except in the performance of official military or law enforcement duties or in lawful self-defense. Nothing contained herein shall be construed to prevent the possession of firearms on one's own domicile nor prevent their transportation to a municipality allowing discharge of firearms. (1942, Rev. Code, Ch. XXVIII, § 1; Ord. of 5-18-87)

Sec. 34-2 – 34-3. Repealed.

(1942 Rev. Code, Ch. XXVIII, Sec. 2; Ord. of 10-3-05)

Secs. 34-4 – 34-13. Reserved.

ARTICLE II. USE OF BLASTING

Sec. 34-14. Purpose.

This ordinance is intended to minimize negative impacts from blasting associated with construction and related activities. Such impacts include but are not limited to airborne shock waves, flying debris, ground vibrations, and dust which are physically harmful and otherwise detrimental to individuals and the community in the enjoyment of life, property and the conduct of business. It is also intended to prevent damage to geologic and environmental resources upon which depend such features as wells and wildlife. Extractive Industries shall not be subject to these requirements, however shall require an annual permit and be subject to all other State and Federal regulations on Mining/Quarrying activities. (1942 Rev. Code, Ch. XXVIII-A, § 2; Ord. of 12-1-69; Ord. of 10-3-05)

Sec. 34-15. Code compliance.

The use and storage of explosives and blasting agents in the city shall be conducted in compliance with all pertinent sections of the Code and, except as superseded by the provisions of this article, “National Fire Protection Association Codes”, NFPA 1 Uniform Fire Code and NFPA 495 Explosive Materials Code, or other applicable state or federal regulation. In the case of a conflict with another provision, the stricter provision shall apply. (1942 Rev. Code, Ch. XXVIII-A, § 1; Ord. of 12-1-69; Ord. of 10-3-05)

Sec. 34-16. Transportation of explosives.

Every vehicle transporting explosives shall be compliant with NFPA 495, Chapter 7 and all federal and state laws and regulations. (1942 Rev. Code, Ch. XXVIII-A, §§ 3, 6; Ord. of 12-1-69; 10-3-05)

Sec. 34-17. Permit required. (See Master Fee Schedule.)

Prior to any blasting within the city, a permit must be obtained from the code enforcement officer. Prior to granting the permit, the code enforcement officer shall request comments on the application from the fire, police, and public services departments. Review by other departments may be sought if appropriate. Permit applications shall include the following information:

- (a) Names, addresses, and contact numbers for the applicant, blaster, property owner, and general contractor, if any.
- (b) Location(s) of proposed blasting activity.
- (c) Estimated number of cubic yards of material to be removed by blasting.
- (d) Start/end date.
- (e) Planned number of blasts.
- (f) A description of the project for which the blasting is being undertaken.
- (g) Evidence of insurance. (Minimum liability of \$3,000,000.00)
- (h) Qualifications of personnel performing blasting and evidence of certification to conduct blasting in the state.
- (i) The code enforcement officer may require a pre-blast survey and monitoring program.

(1942 Rev. Code, Ch. XXVIII-A, § 4; Ord. of 12-1-69; Ord. of 10-3-05)

Sec. 34-18. Notification.

(a) The blaster shall notify all property owners within five hundred (500) feet for all blasting projects. Notice shall be by registered mail sent at least five (5) business days prior to the intended date of commencement of blasting operations. Any property within five hundred (500) feet may request a pre-blast survey at the expense of the contractor. Additional notification may be required by the code enforcement officer.

(b) For any blasting operation, the blaster shall notify public safety communications who shall notify the fire rescue department and the code enforcement officer on the day of the blasting at least four (4) hours prior to the detonation(s). The notice may be given orally, but the burden of proof is on the blaster as to whether the notice was received.

(c) Where an excavator encounters a small amount of ledge when doing a street opening or in another similar small blasting project situation where advance notice is not reasonably feasible, the city engineer can modify the notice requirements. (1942 Rev. Code, Ch. XXVIII-A, § 5; Ord. of 12-1-69; Ord. of 10-3-05)

Sec. 34-19. Inspection and monitoring.

(a) The code enforcement officer, city engineer, fire chief or other duly authorized fire officer may observe any authorized blasting operations and may also order that additional ground vibration and air blast overpressure measurements using approved instrumentation be made by

the blaster to ensure the limits specified in “NFPA 495 Explosive Materials Code” are not exceeded.

(b) All storage sites shall be subject to inspection and verification of compliance with this ordinance. (Ord. of 10-3-05)

Sec. 34-20. Records.

Persons responsible for all blasting projects shall maintain a record of each blast. All records shall be retained at least five (5) years following cessation of the blasting operation and shall be available for inspection by the code enforcement officer, city engineering, fire chief or other duly authorized fire officer and shall contain the following minimum data:

- (a) Name of person responsible for the blasting operation.
 - (b) Location, date(s), and time of blast (not before 8 a.m., not after 5 p.m. Monday through Friday, excluding holidays).
 - (c) Name of blaster.
 - (d) Type of material blasted.
 - (e) Number of holes, burden and spacing.
 - (f) Diameter and depth of holes.
 - (g) Types of explosives used.
 - (h) Amount of explosives used.
 - (i) Whether mats or other protections were used.
- (Ord. of 10-3-05)

Sec. 34-21. Appeal of denial by code enforcement officer.

Where the code enforcement officer has denied a blasting permit under this article, the applicant may appeal the denial to the zoning board of appeals within 30 days of the code enforcement officer’s decision by filing a written notice of appeal with the code enforcement officer. (Ord. of 10-3-95)

Sec. 34-22. Conditions.

Upon issuance of any blasting permit, the code enforcement officer may prescribe any reasonable conditions or requirements deemed necessary to minimize adverse effects upon the neighborhood or community. This shall include, but not limited to, the reclaiming for disposal off site of all material that prior to detonation was regulated by NFPA 495 and has been rendered inert, such as blasting caps and detonation cord. (Ord. of 10-3-95)

Sec. 34-23. Penalties.

Any material misstatement or omission of information required by this article or the violation of any condition attached to a permit granted under this article shall constitute a violation and be subject to the fine set forth in the Master Fine Schedule attached hereto as Appendix C. (Ord. of 10-3-05)

Sec. 34-24. Severability.

If any provisions of this ordinance is declared unconstitutional or held invalid, it shall not affect any other section, clause, or provision thereof, but the same shall remain in full force and

effect. This ordinance does not restrict the fire chief, fire inspector or other duly authorized fire officer from enforcing any requirements of adopted or referenced NFPA codes in other sections of the Code. (Ord. of 10-3-05)

Chapter 35

WESTBROOK CABLE TELEVISION ORDINANCE

Sec. 35-1. Definitions.

(a) *Cable television system* shall mean any community antennae system or facility that, in whole or in part, receives directly or indirectly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals by wire or cable to subscribing members of the public who pay for such services, but such term shall not include any such facility that serves only the residents of one or more apartment dwellings under common ownership, control or management.

(b) *Cable television company* shall mean any person, firm or corporation owning, controlling, operating, managing or leasing a cable television system within the city, sometimes hereinafter referred to as "the company".

(c) *City* shall mean the City of Westbrook and the area within its territorial city limits, and where applicable its officers and representatives. (Ord. of 4-7-75)

Sec. 35-2. Franchise required.

No person, firm, or corporation shall install, maintain or operate within the city or any of its public streets or other public areas any equipment or facilities for the operation of a cable television system unless a franchise authorizing the use of said public streets or areas has first been obtained pursuant to the provisions of this chapter and unless said franchise is in full force and effect. (Ord. of 4-7-75)

Sec. 35-3. Franchise contract.

(a) The municipal officers of the city may contract on such terms, conditions and fees as are in the best interests of the municipality and its residents with a cable television company for the operation of a cable television system throughout the city, including the granting of an exclusive franchise for the operation thereof for a period not to exceed ten (10) years.

(b) Applicants for a franchise shall pay a nonrefundable filing fees set forth in the Master Fee Schedule attached hereto as Appendix B, to defray the cost of public notice, and advertising expenses relating to such applications. The applications shall be filed with the city clerk and shall contain such information as the city may require, including but not limited to a general description of the applicant's proposed operation, a schedule of proposed charges, a statement detailing its business or corporate organization with a financial statement for the two (2) previous fiscal years, an estimated ten-year financial projection of its proposed system and its proposed annual city franchise fee or the basis for same, and a statement detailing the prior operational experience of the applicant in both CATV and microwave service including that of its officers, management and staff to be associated with the proposed operation.

(c) Said franchise contract may be revoked by the municipal officers for good and sufficient cause after due notice to the company and a public hearing thereon; with the right to appeal to the Cumberland County Superior Court under Rule 80-B of the Court Rules of Civil Procedure in accordance with due process. (Ord. of 4-7-75)

Sec. 35-4. Public hearing.

Before authorizing the issuance of any such franchise contract the municipal officers shall review the applicant's character, financial and technical qualifications and the adequacy and

feasibility of its qualifications to operate a cable television system throughout the city, and shall conduct a public hearing thereon with at least seven (7) days advertised notice prior to said public hearing. (Ord. of 4-7-75)

Sec. 35-5. Performance bond and insurance coverage.

(a) The company shall secure and file in the office of the city clerk a performance bond in the amount specified in the Master Fee Schedule, attached hereto as Appendix B, and conditioned upon the full and faithful performance of the duties, undertakings, covenants, terms, conditions and agreements of the Westbrook cable television franchise contract as they relate to the construction of the cable television system. All of the obligations under this performance bond shall become void upon the completion and acceptance by the municipal officers, after reviewing the recommendations of the cable TV regulatory board, of the cable television system in conformance with the said duties, undertakings, covenants, terms, conditions and agreements of the Westbrook cable television franchise contract.

(b) The company shall secure and file evidence of such public liability insurance coverage as the municipal officers may require. (Ord. of 4-7-75; Ord. of 12-6-76)

Sec. 35-6. Cable TV regulatory board established; composition; appointment, term of members.

There is hereby established a five (5) member cable TV regulatory board which shall be composed of residents of the city with one member from each of the five (5) voting wards. Said members shall be appointed by the mayor, subject to the approval of the city council, and the initial members shall be appointed as follows: Two (2) for a term of one year, two (2) for two (2) years, and one for three (3) years. Thereafter all subsequent appointments except to fill vacancies, shall be for a term of three (3) years and they shall serve until their successors are appointed. Persons, or any of their immediate family, who receive any form of remuneration from or who own stock in the cable television company, or its affiliates, shall not be qualified for appointment or for service on said board. (Ord. of 4-7-75)

Sec. 35-7. Duties of the board.

The board shall have a chairman, vice-chairman, and a secretary and shall have the following duties:

- (a) Adopt such rules and regulations as it may deem necessary for monitoring and regulating the operation of the system, subject to the approval of the council.
- (b) Make recommendations to the cable television company concerning educational and local interest programming.
- (c) Resolve complaints, disputes, or disagreements between subscribers and the company.
- (d) Have the authority to conduct public hearings and issue such appropriate orders as it may deem necessary to correct any deficiencies in the operation of said system. The board's decisions and findings shall be final and binding upon all parties including the company, except such a decision or finding may be appealed to the municipal officers and/or to the Cumberland County Superior Court under said Rule 80-B.

All such rules, regulations and orders of the board shall not be in conflict with those that have been or may be adopted by the Federal Communications Commission for the operation of such systems. (Ord. of 4-7-75)

Chapter 36

WESTBROOK HUMAN RIGHTS ORDINANCE

ARTICLE I. DISCRIMINATION BASED ON SEXUAL ORIENTATION

Sec. 36-1. Purpose.

To protect the public health, safety and welfare and to better ensure the basic human right to a life with dignity, it is declared the policy of the City of Westbrook to correct and to prevent discrimination in employment, housing, access to public accommodations, and the extension of credit, on account of a person's sexual orientation. (Ord. of 7-29-02)

Sec. 36-2. Definitions.

As used in this article, unless the context indicates otherwise, the following words shall have the following meanings:

Application for credit. Any communication, oral or written, by a person to a creditor requesting an extension of credit to that person or to any other person, and includes any procedure involving the renewal or alteration of credit privileges or the changing of the name of the person to whom credit is extended.

Credit. The right granted by a creditor to a person to defer payment of debt or to incur debt and defer its payment, or purchase property or services and defer payment therefore.

Credit sale. Any transaction with respect to which credit is granted or arranged by the seller. The term includes any contract in the form of a bailment or lease if bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved, and it agreed that the bailee or lessee will become the owner of the property upon full compliance with his obligations under the contract.

Credit transaction. Any invitation to apply for credit, application for credit, extension of credit or credit sale.

Creditor. Any person who regularly extends or arranges for the extension of credit for which the payment of a finance charge or interest is required, whether in connection with loans, sale of property or services or otherwise.

Discriminate. Includes, without limitation, segregate or separate.

Employee. An individual employed by an employer, but not including any individual employed by his/her parents, spouse or child.

Employer. Any person in this city employing any number of employees, whatever the place of employment of the employees, and any person outside the city employing any number of employees whose usual place of employment is within this city; and person acting in the interest of any employer, directly or indirectly; and labor organizations, whether or not organized on a religious, fraternal or sectarian basis, with respect to their employment of employees. "Employer" does not include a religious or fraternal corporation or association, not organized for private profit and in fact not conducted for private profit, with respect to employment of its members of the same religion, sect or fraternity.

Employment agency. Any person undertaking with or without compensation to procure opportunities to work, or to procure, recruit, refer or place employees. It includes, without

limitation, placement services, training schools and centers, and labor organizations, to the extent that they act as employee referral sources; and it includes any agent of such person.

Extension of credit. Any acts incident to the evaluation of an application for credit and the granting of credit.

Housing accommodation. Any building or structure or portion thereof, or any parcel of land, developed or undeveloped, which is occupied, or is intended to be occupied or to be developed or to be developed for occupancy, for residential purposes, excepting: a) an owner-occupied dwelling of up to four (4) dwelling units; b) the rental of not more than four (4) rooms of a one-family dwelling that is occupied by the owner; or c) the rental of any dwelling owned, controlled or operated for other than commercial purpose, by a religious corporation to its membership, unless such membership is restricted on account of sexual orientation.

Invitation to apply for credit. Any communication, oral or written, by a creditor which encourages or prompts an application for credit.

Owner-occupied. Property that is the primary physical residence of the owner.

Person. One or more individuals, partnerships, associations, organizations, corporations, municipal corporations, legal representatives, trustees, trustees in bankruptcy, receivers and other legal representatives, include the city and all agencies thereof.

Place of public accommodation. Any establishment operated by a public or private entity that in fact caters to, or offers its goods, facilities or services to, or solicits or accepts patronage from, the general public, regardless of where goods or services are provided. This definition shall be liberally construed to accomplish the purpose of the ordinance. The ordinance shall apply to the following establishments, which are included for the purpose of illustration only and not by way of limitation:

- a. An inn, hotel, motel or other place of lodging, whether conducted for the entertainment or accommodation of transient guests or of those seeking health, recreation or rest;
- b. A restaurant, eating house, bar, tavern, buffet, saloon, soda fountain, ice cream parlor or other establishment serving or selling food or drink;
- c. A motion picture house, theater, concert hall, stadium, roof garden, or other place of exhibition or entertainment;
- d. An auditorium, convention center, lecture hall or other place of public gathering;
- e. A bakery, grocery store, clothing store, hardware store, shopping center, garage, gasoline station or other sales or rental establishment;
- f. A laundromat, dry cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, dispensary, clinic, bathhouse or other service establishment;
- g. All public conveyances operated on land or water or in the air as well as a terminal, depot or other station used for specified public transportation;
- h. A museum, library, gallery or other place or public display or collection;

- i. A park, zoo, amusement park, race course, skating rink, fair, bowling alley, golf course or club, gymnasium, health spa, shooting gallery, billiard or pool parlor, swimming pool, boardwalk or other place of recreation, exercise or health;
- j. A nursery, elementary, secondary, undergraduate or postgraduate school or other place of education;
- k. A daycare center, senior citizen center, homeless shelter, food bank, adoption agency or other social service center establishment;
- l. Public elevators of buildings occupied by two (2) or more tenants or by the owner and one or more tenants;
- m. A municipal building, courthouse, city hall or other establishment of the State or local government; and
- n. When a place of public accommodation is located in a private residence, the portion of the residence used exclusively in the operation of the place of public accommodation or that portion used exclusively in the operation of the place of public accommodation or that portion used both for the place of public accommodation and for the residential purposes is covered by this chapter. The covered portion of the residence extends to those elements used to enter the place of public accommodation, and those exterior and interior portions of the residence available to or used by customers or clients, including rest rooms.

Real estate broker and real estate salesman. All persons meeting the definition of Section 4001(2)(3) of Title 32 of the Maine Revised Statutes Annotated, whether or not they are licensed or required to be licensed.

Sexual orientation. Having a preference or orientation for, being identified as having a preference or orientation for, or having a history of a preference for, heterosexuality, homosexuality, or bisexuality.

(Ord. of 7-29-02)

Sec. 36-3. Employment discrimination.

It shall be unlawful employment discrimination, in violation of this article, except where based on a bona fide occupational qualification:

- (a) For any employer to fail or refuse to hire or otherwise discriminate against any applicant for employment because of such reason, to discharge an employee; or to discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment; or in recruiting of individuals for employment or in hiring them; to utilize any employment agency which such employer knows, or has reasonable cause to know, discriminates against individuals because of their sexual orientation.
- (b) For any employment agency to fail or refuse to classify properly or refer for employment or otherwise discriminate against any individual because of sexual orientation, or to comply with an employ's request for the referral of job applicants, if such request indicates whether directly or indirectly that such employer will afford full and equal employment opportunities to individuals regardless of their sexual orientation.

- (c) For any labor organization to exclude from apprenticeship or membership, or to deny full and equal membership rights, to any applicant for membership, because of sexual orientation, or because of such reason to deny a member full and equal membership rights, expel from membership, penalize or otherwise discriminate in any manner with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, representation, grievances or any other matter directly or indirectly related to membership or employment, whether or not authorized or required by the constitution or bylaws of such sexual orientation, or to cause or attempt to cause any employer to discriminate against an individual in violation of this section.
- (d) For any employer or employment agency or labor organization, prior to employment or admission to membership of any individual, to:
 - (1) Elicit or attempt to elicit any information directly or indirectly pertaining to sexual orientation except where some privileged information is necessary for an employment agency or labor organization to make a suitable job referral;
 - (2) Make or keep a record of sexual orientation;
 - (3) Use any form of application for employment or personnel or membership blank containing questions or entries directly or indirectly pertaining to sexual orientation;
 - (4) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination based upon sexual orientation;
 - (5) Establish, announce or follow a policy of denying or limiting, through quota system or otherwise, employment or membership opportunities of any group because of sexual orientation; or
- (e) For an employer or employment agency or labor organization to discriminate in any manner against any individual because they have opposed any practice which would be a violation of the article, or because they have made a charge, testified or assisted in any manner in any investigation, proceeding or hearing under this article. (Ord. of 7-29-02)

Sec. 36-4. Not employment discrimination.

It shall not be unlawful employment discrimination under this ordinance:

(a) *Records.* After employment or admission to membership, to make a record of such features of an individual as are needed in good faith for the purpose of identifying them, provided such record is intended and used in good faith solely for such identification, and not the purpose of discrimination in violation of this article.

(b) *Required records.* To record any data required by law, or by the rules and regulations of any state or federal agency, provided such records are kept in good faith for the purpose of complying with law, and are not used for the purpose of discrimination in violation of this article. (Ord. of 7-29-02)

Sec. 36-5. Unlawful housing discrimination.

It shall be unlawful housing discrimination, in violation of this article:

- (a) For any owner, lessee, sub lessee, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation, or any agent of these to make or cause to be made any written or oral inquiry concerning the sexual orientation of any

prospective purchaser, occupant or tenant of such housing accommodation; or to refuse to show or refuse to sell, rent, lease, let or otherwise deny to or withhold from any individual such housing accommodation because of sexual orientation of such individual; or to issue any advertisement relating to the sale, rental or lease of such housing accommodation which indicates any preference, limitation, specification or discrimination based upon sexual orientation; or to discriminate against any individual based upon sexual orientation; or to discriminate against any individual because of sexual orientation in the price, terms, conditions or privileges of the sale, rental or lease of any such housing accommodations or in the furnishing of facilities or services in connection therewith, or to evict or attempt to evict any tenant of any housing accommodation because of sexual orientation;

- (b) For any real estate broker or real estate sales person, or agent of one of them to fail or refuse to show any applicant for a housing accommodation any such accommodation listed for sale, lease or rental, because of sexual orientation of such applicant or of any intended occupant of such accommodation, or to misrepresent for the purpose of discriminating on account of sexual orientation of such applicant or intended lease or rental; or for such a reason to fail to communicate to the person having the right to sell or lease such housing accommodation any offer for the same made by any applicant thereof; or in any other manner to discriminate against any applicant for housing because of sexual orientation of such applicant or of any intended occupant of the housing accommodation, or to make or cause to be made any written or oral inquiry or record concerning the sexual orientation of any such applicant or intended occupant, or to accept for listing any housing accommodation when the person having the right to sell or lease that same has directly or indirectly indicated an intention of discriminating among prospective tenants or purchasers on the ground of their sexual orientation, or when he knows or has reason to know that the person having the right to sell or lease such housing accommodation has made a practice of such discrimination; or
- (c) For any person to whom application is made for a loan of other form of financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, whether secured or unsecured, or agent of such person, to make or cause to be made any oral or written inquiry concerning the sexual orientation of any individual seeking such financial assistance, or of existing or prospective occupants or tenants of such housing accommodations; or to discriminate in the granting of such financial assistance, or in the term, conditions or privileges relating to the obtaining or use of any such financial assistance, against any applicant because of the sexual orientation of such applicant or of the existing or prospective occupants or tenants. (Ord. of 7-29-02)

Sec. 36-6. Not housing discrimination.

With respect to housing, nothing in this article shall be construed in any manner to prohibit or limit the exercise of the privilege of every person and the agent of any person having the right to sell, rent, lease or manage a housing accommodation, to set up and enforce specifications in the selling, renting, leasing or letting thereof or in the furnishing of facilities or services in connection therewith which are not based on the sexual orientation of any prospective or actual purchaser, lessee, tenant or occupant thereof. Nothing in this article shall be construed in any manner to prohibit or limit the exercise of the privilege of every person and the agent of any person making loans for or offering financial assistance in the acquisition, construction,

rehabilitation, repair or maintenance of housing accommodations to set standards and preferences, term, conditions, limitations or specifications for the granting of such loans or finance assistance which are not based on the sexual orientation of any existing or prospective owner, lessee, tenant or occupant of such housing accommodation. (Ord. of 7-29-02)

Sec. 36-7. Unlawful public accommodations.

It shall be unlawful public accommodation discrimination, in violation of this article:

- (a) For any person, being the owner, lessee, proprietor, manager, superintended, agent or employee of any place of public accommodation, to directly or indirectly refuse, withhold from or deny to any person, on account of sexual orientation, any of the accommodations, advantages, facilities or privileges of such place of public accommodation, or for such reason in any manner to discriminate against any person in the price terms or conditions upon which access to such accommodations, advantages, facilities and privileges may depend; or
- (b) For any person to directly or indirectly public, circulate, display, post or mail any written, printed, painted or broadcast communications, notice or advertisement, to the effect that any of the accommodations, advantages, facilities and privileges of any place of public accommodation shall be refused, withheld from or denied to any person on account of sexual orientation, or that the patronage or custom thereof of any person belonging to or purporting to be of any particular sexual orientation is unwelcome, objectionable or not acceptable, desired or solicited, or that the clientele thereof is restricted to members of particular sexual orientation. The production of any such written, printed, painted or broadcast communication, notice or advertisement, purporting to relate to any such place, shall be presumptive evidence in any action that the same was authorized by its owner, manager or proprietor. (Ord. of 7-29-02)

Sec. 36-8. Unlawful credit extension discrimination.

It shall be unlawful credit discrimination for any creditor to refuse the extension of credit to any person solely on the basis of sexual orientation in any credit transaction. It shall not be unlawful credit discrimination to comply with the terms and conditions of any bona fide group credit life, accident and health insurance plan, for a financial institution extending credit to a married person to require both the husband and the wife to sign a note and mortgage and to deny credit to persons under the age of eighteen (18) or to consider a person's age in determining the terms upon which credit will be extended. (Ord. of 7-29-02)

Sec. 36-9. Enforcement by civil action.

A violation of this article shall be a civil infraction and shall be enforceable in the Maine Superior Court in a civil action. Within the time limited, a person who has been subject to unlawful discrimination may file a civil action in the Superior Court against the person or persons who committed the unlawful discrimination. (Ord. of 7-29-02)

Sec. 36-10. Time.

The action shall be commenced not more than two years after the unlawful act complained of. (Ord. of 7-29-02)

Sec. 36-11. Burden of proof.

In any civil action under this article, the burden shall be on the person seeking relief to prove, by a fair preponderance of the evidence, that the alleged unlawful discrimination occurred. (Ord. of 7-29-02)

Sec. 36-12. Relief.

In any action filed under this article, by any person:

- (a) If the court finds that unlawful discrimination has occurred, its judgment shall specify an appropriate remedy or remedies therefore. These may include, but are not limited to:
 - (1) An order to cease and desist from the unlawful practices specified in the order;
 - (2) An order to employ or reinstate a victim of unlawful employment discrimination, with or without back pay;
 - (3) An order to accept or reinstate such a person in a union;
 - (4) A temporary order enjoining the sale or rental to others of the housing accommodations as to which the violation allegedly occurred, or against the sale or rental of a single housing accommodation substantially identical thereto and controlled by the alleged violator, which it appears probable that the plaintiff will succeed upon final disposition of the case. Such relief shall be liberally granted in the interests of furthering the purposes of this article;
 - (5) An order to rent or sell a specified housing accommodation, or one substantially identical thereto, if controlled by the respondent, to a victim of unlawful housing discrimination;
 - (6) An order requiring the disclosure of the locations and descriptions of all housing accommodations which the violator has the right to sell, rent, lease or manage;
 - (7) An order to pay the victims of unlawful price discrimination three (3) times the amount of any excessive price demanded and paid by reason of such unlawful discrimination; and
 - (8) An order to pay to the complainant civil penal damages in the amount specified in the Master Fine Schedule attached hereto as Appendix C.
- (b) The Court, in its discretion, may allow the prevailing party reasonable attorney's fees and costs. (Ord. of 7-29-02)

Sec. 36-13. Exceptions.

In addition to the other exceptions provided in this article, this article does not:

- (a) Require the teaching of any particular subject in the public schools;
- (b) Apply to a religious corporation, association or organization, including educational institutions substantially controlled or supported by religious organizations; or
- (c) Require any form of affirmative action, quotas, or preferential treatment based on sexual orientation. (Ord. of 7-29-02)

Chapter 37

POST-CONSTRUCTION STORMWATER MANAGEMENT

Art. I. [In General](#), §§ 37-1 - 37-12

Art. II. [Management Plan](#), §§ 37-13 – 37-20

Art. III. [Post Construction Stormwater Management Plan Compliance](#), §§ 37-21 - 37-29

ARTICLE I. IN GENERAL

Sec. 37-1. Purpose.

The purpose of this “Post-Construction Stormwater Management Ordinance” (the “Ordinance”) is to provide for the health, safety, and general welfare of the citizens of the City of Westbrook through monitoring and enforcement of compliance with post-construction stormwater management plans in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations and of Maine’s Small Municipal Separate Storm Sewer Systems General Permit.

This Ordinance established methods for post-construction stormwater management in order to comply with minimum control measures requirements of the federal Clean Water Act, of federal regulations and of Maine’s Small Municipal Separate Storm Sewer Systems General Permit.

Sec. 37-2. Objectives.

This Ordinance seeks to ensure that post-construction stormwater management plans are followed and stormwater management facilities are properly maintained and pose no threat to public safety.

Sec. 37-3. Severability.

The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this Ordinance.

Sec. 37-4. Basis.

The City of Westbrook enacts this “Post-Construction Stormwater Management Control Ordinance” (the “Ordinance”) pursuant to 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), 38 M.R.S.A. § 413 (the “Wastewater Discharge Law”), 33 U.S.C. § 1251 *et seq.* (the “Clean Water Act”), and 40 CFR Part 122 (U.S. Environmental Protection Agency’s regulations governing the National Pollutant Discharge Elimination System (“NPDES”)). The Maine Department of Environmental Protection, through its promulgation of the “General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems,” has listed the City of Westbrook as having a Regulated Small Municipal Separate Storm Sewer

System (“Small MS4”); under this General Permit, listing as a Regulated Small MS4 necessitates enactment of this Ordinance as part of the Municipality’s Storm Water Management Program in order to satisfy the minimum control measures required by Part IV D 5 (“Post-construction stormwater management in new development and redevelopment”).

Sec. 37-5. Definitions.

For the purposes of this Ordinance, the terms listed below are defined as follows:

Applicant. A Person with requisite right, title or interest or an agent for such Person who has filed an application for New Development or Redevelopment that requires a Post-Construction Stormwater Management Plan under this Ordinance.

Best Management Practices (“BMP”). Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the State. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the “Clean Water Act”), and any subsequent amendments thereto.

Construction Activity. Construction Activity including one acre or more of Disturbed Area, or activity with less than one acre of total land area that is part of a subdivision, if the subdivision will ultimately disturb equal to or greater than one acre.

Discharge. Any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of Pollutants to “waters of the State.” “Direct discharge” or “point source” means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which Pollutants are or may be discharged.

Disturbed Area. Clearing, grading and excavation. Mere cutting of trees, without grubbing, stump removal, disturbance or exposure of soil is not considered “disturbed area.” “Disturbed area” does not include routine maintenance but does include redevelopment. “Routine maintenance” is maintenance performed to maintain the original line and grade, hydraulic capacity, and original purpose of land or improvements thereon.

Enforcement Authority. The City Engineer or his/her designee, the person(s) or department authorized by the City to administer and enforce this Ordinance.
City. The City of Westbrook.

Municipal Permitting Authority. The municipal official or body that has jurisdiction over the land use approval or permit required for a New Development or Redevelopment.

Municipal Separate Storm Sewer System, or MS4. Conveyances for storm water,

including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, State agency or Federal agency or other public entity that discharges directly to surface waters of the State.

National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge Permit. A permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

New Development. Means any Construction Activity on unimproved Premises.

Person. Any individual, firm, corporation, municipality, quasi-municipal corporation, State agency or Federal agency or other legal entity.

Pollutant. Dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-Construction Stormwater Management Plan. BMPs and Stormwater Management Facilities employed by a New Development or Redevelopment to meet the stormwater standards of the Municipality's subdivision, site plan, or other zoning, planning or other land use ordinances and approved by the Municipal Permitting Authority.

Premises. Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the Municipality from which Discharges into the Storm Drainage System are or may be created, initiated, originated or maintained.

Qualified Post-Construction Stormwater Inspector. A person who conducts postconstruction inspections of Stormwater Management Facilities and meets the following qualifications:

- (1) The Inspector shall not have any ownership or financial interest in the property being inspected nor be an employee or partner of any entity having an ownership or financial interest in the property, and
- (2) The Inspector shall also meet the following or similar criteria as approved by the City Engineer, who shall maintain a list of approved Qualified Post-Construction Stormwater Inspectors:
 - (i) Have a working knowledge of Chapter 500, Stormwater Management Rules and Maine's Stormwater BMP Manual,
 - (ii) Have a college degree in environmental science, civil engineering, or comparable expertise,
 - (iii) Have a demonstrated practical knowledge of stormwater hydrology and stormwater management techniques, including the maintenance requirements for Stormwater Management Facilities, and

- (iv) Have the ability to determine if stormwater facilities are performing as intended.

Redevelopment. Construction Activity on Premises already improved with buildings, structures or activities or uses, but does not include such activities as exterior remodeling.

Regulated Small MS4. Any Small MS4 regulated by the State of Maine “General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems” dated June 3, 2003 (“General Permit”), including all those located partially or entirely within an Urbanized Area (UA) and those additional Small MS4s located outside an UA that as of the issuance of the General Permit have been designated by the DEP as Regulated Small MS4s.

Small Municipal Separate Storm Sewer System, or Small MS4. Any MS4 that is not already covered by the Phase I MS4 stormwater program including municipally owned or operated storm sewer systems, State or federally-owned systems, such as colleges, universities, prisons, Maine Department of Transportation and Maine Turnpike Authority road systems and facilities, and military bases and facilities.

Storm Drainage System. The City’s Regulated Small MS4.

Stormwater. Any Stormwater runoff, snowmelt runoff, and surface runoff and drainage; “Stormwater” has the same meaning as “Storm Water.”

Stormwater Management Facilities. Any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures that are part of the Post-Construction Stormwater Management Plan for a New Development or Redevelopment.

Urbanized Area (“UA”). The areas of the State of Maine so defined by the latest decennial census by the U.S. Bureau of the Census.

Sec. 37-6. Applicability.

- (a) This Ordinance applies to all New Development and Redevelopment with a disturbance greater than one (1) acre within the City that discharges stormwater to the City’s Municipal Storm Sewer System (MS4) and to associated stormwater management facilities.
- (b) Exception: This Ordinance does not apply to New Development or Redevelopment on a lot, tract or parcel where that lot, tract or parcel is part of a subdivision that is approved under this Ordinance. Said lot, tract or parcel shall not require separate review under this Ordinance, but shall comply with the Post-Construction Stormwater Management Plan requirements for that approved subdivision.

Sec. 37-7 – 37-12. Reserved.

ARTICLE II. MANAGEMENT PLAN

Sec. 37-13. General Requirement.

Notwithstanding any ordinance provision to the contrary, and except as provided in Section 37-6.b above, no Applicant for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for New Development or Redevelopment to which this Ordinance is applicable shall receive such permit or approval for that New Development or Redevelopment unless the Applicant also receives approval under the Municipality's subdivision, site plan or other zoning, planning or other land use ordinances for its Post-Construction Stormwater Management Plan and Stormwater Management Facilities for that New Development or Redevelopment, even if the Municipality's subdivision, site plan or other zoning, planning or other land use ordinances would not otherwise apply to that New Development or Redevelopment.

Sec. 37-14. Notice of BMP Discharge to Municipality's MS4.

At the time of application for a building permit, subdivision approval, site plan approval or other zoning, planning or other land use approval for New Development or Redevelopment to which this Ordinance is applicable, the Applicant shall notify the Municipal Permitting Authority if its Post-Construction Stormwater Management Plan includes any BMP(s) that will discharge to the Municipality's MS4 and shall include in this notification a listing of which BMP(s) will so discharge.

Sec. 37-15 – 37-20. Reserved.

ARTICLE III. POST-CONSTRUCTION STORMWATER MANAGEMENT PLAN COMPLIANCE

Sec. 37-21. General Requirements.

Any Person owning, leasing or having control over Stormwater Management Facilities required by a Post-Construction Stormwater Management Plan approved under the Municipality's subdivision, site plan or other zoning, planning or other land use ordinances shall demonstrate compliance with that Plan as follows.

- (a) That Person or a Qualified Post-Construction Stormwater Inspector hired by that Person, shall, at least annually, inspect, clean and maintain the Stormwater Management Facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved Post-Construction Stormwater Management Plan..
- (b) If the Stormwater Management Facilities require maintenance to function as intended by the approved Post-Construction Stormwater Management Plan, that Person shall take corrective action(s) to address the deficiency(ies).
- (c) That Person shall employ a Qualified Post-Construction Stormwater Inspector to provide, on or by March 1st of each year, a completed and signed

certification to the Enforcement Authority in a form identical to that provided by the City Engineer, certifying that the Person has inspected, cleaned and maintained the Stormwater Management Facilities, describing any deficiencies found during inspection of the Stormwater Management Facilities and certifying that the Person has repaired any deficiencies in the Stormwater Management Facilities noted during the annual inspection. In addition, any persons required to file an annual certification under this Section 37-13 of this Ordinance shall include with the annual certification payment in the amount listed on the Master Fee Schedule to pay the administrative and technical costs of review of the annual certification.

Sec. 37-22. Right of Entry.

In order to determine compliance with this Ordinance, the Enforcement Authority may enter upon property at reasonable hours to inspect the Stormwater Management Facilities.

Sec. 37-23. Annual Report.

Beginning July 1, 2010 and each year thereafter, the City shall include the following in its Annual Report to the Maine Departments of Environmental Protection:

- (a) The cumulative number of sites that have Stormwater Management Facilities discharging into their MS4;
- (b) A summary of the number of that have Stormwater Management Facilities discharging into their MS4 that were reported to the Town;
- (c) The number of sites with documented functioning Stormwater Management Facilities; and
- (d) The number of sites that required routine maintenance or remedial action to ensure that Stormwater Management Facilities are functioning as intended.

Sec. 37-24. Enforcement.

It shall be unlawful for any Person to violate any provision of or to fail to comply with any of the requirements of this Ordinance or of the Post-Construction Stormwater Management Plan. Whenever the Enforcement Authority believes that a Person has violated this Ordinance or the Post-Construction Stormwater Management Plan, the Enforcement Authority may enforce this Ordinance in accordance with 30-A M.R.S.A. § 4452.

Sec. 37-25. Notice of Violation.

Whenever the Enforcement Authority believes that a Person has violated this Ordinance or the Post-Construction Stormwater Management Plan, the Enforcement Authority may order compliance with this Ordinance or with the Post-Construction Stormwater Management Plan by written notice of violation to that Person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:

1. The abatement of violations, and the cessation of practices, or operations in violation of this Ordinance or of the Post-Construction Stormwater Management Plan;
2. At the Person's expense, compliance with BMPs required as a condition of approval of the New Development or Redevelopment, the repair of Stormwater Management Facilities and/or the restoration of any affected property; and/or
3. The payment of fines, of the Municipality's remediation costs and of the Municipality's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation, compliance with BMPs, repair of Stormwater Management Facilities and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.

Sec. 37-26. Penalties/Fines/Injunctive Relief.

Any Person who violates this Ordinance or the Post-Construction Stormwater Management Plan shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the Municipality's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any Person who violates this Ordinance or the Post-Construction Stormwater Management Plan also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the Municipality for violation of federal and State environmental laws and regulations caused by or related to that Person's violation of this Ordinance or of the Post-Construction Stormwater Management Plan; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this Section.

Sec. 37-27. Consent Agreement.

The Enforcement Authority may, with the approval of the municipal officers, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this Ordinance or of the Post-Construction Stormwater Management Plan for the purposes of eliminating violations of this Ordinance or of the Post-Construction Stormwater Management Plan and of recovering fines, costs and fees without court action.

Sec. 37-28. Appeal of Notice of Violation.

Any Person receiving a Notice of Violation or suspension notice may appeal the determination of the Enforcement Authority to the Zoning Board of Appeals in accordance with Section 703 of the Land Use Ordinance. The notice of appeal must be received within 30 days from the date of receipt of the Notice of Violation. The Board of Appeals shall hold a *de novo* hearing on the appeal within 30 days from the date of receipt of the notice of appeal. The Board of Appeals may affirm, reverse or modify the decision of the Enforcement Authority. A party aggrieved by the decision of the Board of Appeals may appeal that decision to the Maine Superior Court within 45 days of the date of the Board of Appeals decision pursuant to Rule 80B of the Maine Rules of

Civil Procedure.

Sec. 37-29 Enforcement Measures.

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal to the Board of Appeals, within 45 days of a decision of the Board of Appeals affirming the Enforcement Authority's decision, then the Enforcement Authority may recommend to the municipal officers that the municipality's attorney file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

(Ord. of 4-5-10)

Chapter 38

WESTBROOK PROPERTY ASSESSED CLEAN ENERGY (“PACE”)

- Art. I. [Purpose and Enabling Legislation](#), §§ 38-1 - 38-2
- Art. II. [Title and Definitions](#), §§ 38-3 – 38-4
- Art. III. [Establishment of PACE Program](#), §§ 38-5 - 38-6
- Art. IV. [Conformity with Requirements of the Trust](#), § 38-7
- Art. V. [Program Administration; No Municipal Liability](#), §§ 38-8 - 38-9

ARTICLE I. PURPOSE AND ENABLING LEGISLATION

Sec. 38-1. Purpose.

By and through this Chapter, the City of Westbrook (“City”) declares as its public purpose the establishment of a municipal program to enable its citizens to participate in a Property Assessed Clean Energy (“PACE”) program so that property owners can access financing for energy savings improvements to their properties located in the City. The City declares its purpose and the provisions of this Chapter to be in conformity with federal and state laws.

Sec. 38-2. Enabling Legislation.

The City enacts this Chapter pursuant to State law. Specific enabling legislation is found in Public Law 2009, Chapter 591, 124th Maine State Legislature—“An Act To Increase the Affordability of Clean Energy for Homeowners and Businesses,” also known as the “Property Assessed Clean Energy Act” or the “PACE Act” (codified at 35-A M.R.S.A. §§ 10151, et seq.).

ARTICLE II. TITLE AND DEFINITIONS

Sec. 38-3. Title.

This Chapter shall be known and may be cited as “City of Westbrook Property Assessed Clean Energy (PACE) Ordinance.”

Sec. 38-4. Definitions.

Except as specifically defined below, words and phrases used in this Chapter shall have their customary meanings; as used in this Chapter, the following words and phrases shall have meanings indicated.

Energy savings improvement. An improvement to qualifying property that is new and permanently affixed to qualifying property and that:

1. Will result in increased energy efficiency and substantially reduced energy use and:
 - a. Meets or exceeds applicable United States Environmental Protection Agency and United States Department of Energy Energy Star program or similar energy efficiency standards established or approved by the Trust; or
 - b. Involves air sealing, insulating, and other energy efficiency improvements of residential, commercial or industrial property in a manner approved by the Trust; or
2. Involves a renewable energy installation or an electric thermal storage system that meets or exceeds standards established or approved by the Trust.

Municipality. The City of Westbrook.

PACE agreement. An agreement entered into by an owner or owners of a qualifying property and the Trust, or an agent authorized by the Trust, that authorizes a PACE loan and the creation of a PACE mortgage on qualifying property and that is approved in writing by all owners of the qualifying property at the time of the agreement, other than mortgage holders.

PACE assessment. An assessment made against qualifying property to repay a PACE loan.

PACE district. The district in which the PACE program may operate and which is defined geographically to include the entire municipality as determined by municipal boundary lines.

PACE loan. A loan made to the owner(s) of a qualified property for an energy savings improvement.

PACE mortgage. A mortgage securing a loan made pursuant to a PACE program to fund energy savings improvements on qualifying property.

PACE program. A program established under State statute by the Trust and the City under which property owners can finance energy savings improvements on qualifying property.

Qualifying property. Real property located in the City of Westbrook.

Renewable energy installation. A fixture, product, system, device or interacting group of devices installed behind the meter at a qualifying property, or on contiguous property under

common ownership, that produces energy or heat from renewable sources, including, but not limited to, photovoltaic systems, solar thermal systems, biomass systems, landfill gas to energy systems, geothermal systems, wind systems, wood pellet systems and any other systems eligible for funding under federal Qualified Energy Conservation Bonds or federal Clean Renewable Energy Bonds.

Trust. The Efficiency Maine Trust established in 35-A M.R.S.A. § 10103.

ARTICLE III. PACE PROGRAM

Sec. 38-5. Establishment; funding.

The City hereby establishes a PACE program allowing property owners to access financing for energy savings improvements to their property through PACE loans administered by the Trust or its agent. PACE loan funds are available from the Trust in municipalities that 1) adopt a PACE Ordinance, 2) adopt and implement a local public outreach and education plan, 3) enter into a PACE administration contract with the Trust to establish the terms and conditions of the Trust's administration of the municipality's PACE program, and 4) agree to assist and cooperate with the Trust in its administration of the municipality's PACE program.

Sec. 38-6. Amendment to PACE program.

The City may, from time to time, amend this Chapter to use any other funding sources made available to it or appropriated by it for the express purpose of its PACE program, and the City shall be responsible for administration of loans made from those other funding sources.

ARTICLE IV. CONFORMITY WITH THE REQUIREMENTS OF THE TRUST

Sec. 38-7. Standards adopted; rules promulgated; model documents.

If the Trust adopts standards, promulgates rules, or establishes model documents subsequent to the City's adoption of this Property Assessed Clean Energy ("PACE") Ordinance and those standards, rules or model documents substantially conflict with City's PACE Ordinance, the City, in order to remain eligible to participate with the Trust in the PACE program, will be required to take necessary steps to conform this PACE Ordinance and its PACE program to those standards, rules, or model documents.

ARTICLE V. PROGRAM ADMINISTRATION; NO MUNICIPAL LIABILITY

Sec. 38-8. Program Administration.

A. **PACE Administration Contract.** Pursuant to 35-A M.R.S.A. §10154(2)(A)(2) and (B) of the State enabling legislation, the City may enter into a PACE administration contract with the Trust to administer the functions of the PACE program for the City. The PACE administration contract with the Trust will establish the administration of the PACE program including, without limitation, that:

1. The Trust will enter into PACE agreements with owners of qualifying property in the City's PACE district;
2. The Trust, or its agent, will create and record a Notice of the PACE agreement in the York County Registry of Deeds to create a PACE mortgage;
3. The Trust, or its agent, will disburse the PACE loan to the property owner;
4. The Trust, or its agent, will send assessment statements with payment deadlines to the property owner;
5. The Trust, or its agent, will be responsible for collection of the PACE assessments;
6. The Trust, or its agent, will record any lien, if needed, due to nonpayment of the assessment; and
7. The City, the Trust, or the Trust's agent, promptly shall record the discharges of PACE mortgages upon full payment of the PACE loan.

B. **Adoption of Education and Outreach Program.** In conjunction with adopting this PACE Ordinance, the City shall adopt and implement an education and outreach program so that citizens of City are made aware of home energy saving opportunities, including the opportunity to finance energy savings improvements with a PACE loan.

C. **Assistance and Cooperation.** The City will assist and cooperate with the Trust in its administration of the City's PACE program.

D. **Assessments Not a Tax.** PACE assessments do not constitute a municipal tax but may be assessed and collected by the Trust in any manner determined by the Trust and consistent with applicable law.

Sec. 38-9. Liability of Municipal Officials; Liability of City.

A. Notwithstanding any other provision of law to the contrary, the municipal officers and municipal officials of the City, including, without limitation, the tax assessor and tax collector, are not personally liable to the Trust or to any other person for claims, of whatever

kind or nature, under or related to PACE program, including, without limitation, claims for or related to uncollected PACE assessments.

B. Other than the fulfillment of its obligations specified in a contract with the Trust entered into under Sec. 38-8(A) above, the City has no liability to a property owner for or related to energy savings improvements financed under a PACE program.

(Ord. of 11-1-10)

Land Use Ordinances of the City of Westbrook



Adopted February 9, 2004
Updated November 17, 2014

Notes: These ordinances shall be known collectively and may be cited as the “Land Use Ordinances of the City of Westbrook, Maine”, adopted by the City Council on February 9, 2004. They replacing the following ordinances:

“Zoning Ordinance of the City of Westbrook, Maine,” as originally enacted on December 3, 1973, and amended subsequently.

“Site Plan Review Ordinance of the City of Westbrook,” adopted on May 7, 1979, and amended subsequently.

“Subdivision Ordinance of the City of Westbrook,” adopted on May 1, 1963 and amended subsequently.

Cross references – Planning Board, Sec. 2-265 et seq.; buildings, Ch. 6; Housing, Ch. 17.

State law reference – Planning and land use regulation, 30-A M.R.S.A. Sec. 4301 et seq.

Ordinance Revisions: December 13, 2004; March 7, 2005; June 6, 2005; July 11, 2005; August 15, 2005; January 23, 2006; April 3, 2006; May 15, 2006; August 21, 2006; January 8, 2007; February 5, 2007; July 2, 2007; March 3, 2008; November 17, 2008; December 8, 2008; June 1, 2009; June 22, 2009; November 2, 2009; April 5, 2010; June 7, 2010; September 13, 2010; July 11, 2011; August 6, 2012; October 1, 2012; October 15, 2012; November 19, 2012; March 4, 2013; July 1, 2013; January 6, 2014; February 10, 2014; March 3, 2014; June 23, 2014; November 17, 2014

OFFICIALS OF THE
CITY OF WESTBROOK, MAINE
AT THE TIME OF THIS CODIFICATION

Bruce L. Chuluda
Mayor

City Council

James A. Violette
President

Andrew Gattine, Ward 2
Gary Groves, Ward 3
Suzanne Joyce, Ward 5

John B. O'Hara, At-Large
Ann Peoples, Ward 4
Brendan Rielly, Ward 1

SPECIAL THANKS TO:

The citizens of Westbrook who contributed their time and effort to this Ordinance.

Planning Board
Edward Reidman
Chair

Greg Blake, At-Large
Peggy Cote, Ward 2; Vice-Chair
Rene Daniel, Ward 1
Jay Casavant, Former Member
Stephen Rand, Former Member

Greg Knapton, At-Large
Edward Symbol, Ward 3
Anna Wrobel, Ward 4
Ann Peoples, Former Member

Zoning Board of Appeals
Philip Brown
Chair

Joyce Hebert, Ward 1
Stevan Morrow, Ward 4
Gary Groves, Former Member

Arthur Woolverton, Ward 2
Robert Nadeau, Alternate

Zoning Ordinance Drafting Committee

Philip Brown, Zoning Board of Appeals
Bruce Chuluda, Chamber of Commerce
Rene Daniel, Housing Authority
Richard Durgin, Real Estate Broker

Mark LeClair, Recreation
Betty McInnes, Conservation
Ann Peoples, Planning Board
Eileen Shutts, At-large

**LAND USE ORDINANCE
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Chapter I Preamble

101 Purpose.

This zoning ordinance implements the land use strategies in Westbrook's Comprehensive Plan. The plan calls for Westbrook to:

Establish a well-balanced land use pattern that sustains the economic, institutional, and cultural role of the urban core while meeting the current and future needs of Westbrook citizens in a manner that is cost-effective, equitable, environmentally-sound, and sensitive to the City's visual and cultural character.

The City's cultural character has long been shaped by its history as a vibrant, technologically-advanced mill community. Now, as the mills' role in the community has decreased, Westbrook has a unique opportunity to re-invent itself. No longer dependent on processes that often polluted the environment, Westbrook citizens can now look forward to development and activity that is sensitive to the need of its families and children, respective of its neighborhoods and charm, and sensitive to its environment. To achieve these goals, this ordinance will accomplish the following:

- A. Promote and conserve the health, safety, and general welfare of its residents
- B. Promote a safe and sensitive use of the environment that respects our unique resources:
 - The Presumpscot and Stroudwater Rivers
 - Watersheds such as Mill Brook, Minnow Brook, Nasons Brook, Capisic Brook and Long Creek
 - The rural character of northwest Westbrook
 - The rural character of outer Stroudwater Street
 - The improved air quality
- C. Assist in the efficient provision, utilization, and expansion of the municipality's infrastructure
- D. Maintain and enhance the amenities found in our downtown and throughout our community
- E. Encourage the health of our existing neighborhoods and ensure that new neighborhoods have the same cohesive nature
- F. Conserve and encourage appropriate use of environmentally sensitive land and historically significant buildings, recognizing that Westbrook has a limited supply of both
- G. Promote harmonious interrelationships between differing land uses
- H. Encourage the mix of residential, business, and light industry centers
- I. Promote traffic safety for pedestrians and vehicles
- J. Encourage a mix of residential housing options to serve our diverse population, including senior citizens

(Ord. of 4-5-10)

102 Precedence.

In general, this Ordinance is complementary to other ordinances affecting the use, location, and dimensions of buildings in the City, but where there is a conflict, this Ordinance takes precedence.

In the shoreland zone, whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute, the more restrictive provision shall control.
(Ord. of 12-13-04)

103 Citation.

This Ordinance shall be known as the "Westbrook Zoning Ordinance" and replaces a previous ordinance enacted by the City Council on December 3, 1973, and amended subsequently.

104 Zoning Map.

The City is divided into districts, as shown on the Westbrook Zoning Map, which map is made a part of this Ordinance, which is on file in the office of the City Clerk. The zoning map is based on the Comprehensive Plan's Future Land Use Map, also on file with the City Clerk's office.

105 Rules of Construction.

This Ordinance operates in accordance with the following rules of construction.

105.1 Separability. The invalidity of any provision of this Ordinance does not invalidate any other provision.

105.2 Use of Certain Terms. For the purposes of this Ordinance:

- A. Words used in the singular include the plural and words used in the plural include the singular,
- B. Words used in the present tense include the future,
- C. The word "shall" is mandatory; the word "may" is permissive,
- D. Terms not herein defined shall have the meaning customarily assigned to them in the Webster New Collegiate Dictionary.

105.3 Abbreviations. The following abbreviations are used in this ordinance.

- A. ' is foot or feet.
- B. " is inches
- C. S.F. is square feet.
- D. mm is millimeter(s)

106 Zoning Change.

The Westbrook City Council may amend, revise, replace or otherwise change this zoning Ordinance, or zoning map, after the following:

106.1. Complete Replacement. If the City Council is enacting a complete replacement of this zoning Ordinance or zoning map, the Planning Board must have held a public hearing on the proposed replacement, reviewed the language, and made a recommendation to the City Council.

A. Notice for the public hearing shall follow the procedure outlined in section 106.1.A.(1). through (4)., below. Notices shall indicate that the public hearing is for a complete replacement of the ordinance. If any complete replacement is made to the zoning map, all notices defined in sections 106.1.A.(1) through (4) must include a copy of the proposed zoning map:

(1) Posted in city hall:

(a) At least 13 days prior to the hearing.

(2) Posted on the city's website:

(a) At least 13 days prior to the hearing.

(3) Published at least two (2) times in a newspaper of general circulation:

(a) The first at least 12 days prior to the hearing and the second at least 7 days prior to the hearing.

(4) Mailed to all property owners in the City using the most recent property owner and address records on file with the Westbrook Assessing Department:

(a) The notice shall be mailed by first class mail at least 13 days before the public hearing,

(b) The Planning Board shall prepare and file a written certificate indicating the person to whom the notice was mailed, at what address, and when and from where the notice was mailed.

Notification for a complete replacement of this ordinance or zoning map shall also follow any guidelines set forth in Chapter 2 of the City Ordinances.

106.2. Revision, Amendment, or Changes Other Than a Complete Replacement. The Planning Board has held a public hearing on the proposed revision, amendment or change, reviewed the language, and made a recommendation to the City Council.

A. Notice for the public hearing shall follow the procedure outlined in section 106.2.A.(1). through (4)., below. If any revision, amendment or change is made to the zoning map, all notices defined in sections 106.2.A.(1) through (4) must include a copy of the proposed zoning map:

- (1) Posted in city hall:
 - (a) At least 13 days prior to the hearing.
- (2) Posted on the city's website:
 - (a) At least 13 days prior to the hearing.
- (3) Published at least two (2) times in a newspaper of general circulation:
 - (a) The first at least 12 days prior to the hearing and the second at least 7 days prior to the hearing.
- (4) If the revision, amendment or change affects the use or performance standards of an individual property or zoning district, notice shall be mailed to both the property proposed for change and each property owner within 500 feet from any portion of the property proposed for change; public and private rights-of-way do not limit the 500 foot distance measurement:
 - (a) The notice shall be mailed by first class mail at least 13 days before the public hearing,
 - (b) The Planning Board shall prepare and file a written certificate indicating the person to whom the notice was mailed, at what address, and when and from where the notice was mailed.

106.3. **Public Hearing.** The City Council has held a public hearing, for which the notice for said hearing must be:

- A. Posted in city hall:
 - (1) At least 13 days prior to the hearing.
- B. Posted on the city's website:
 - (1) At least 13 days prior to the hearing.
- C. Published at least two (2) times in a newspaper of general circulation:
 - (1) The first at least 12 days prior to the hearing and the second at least 7 days prior to the hearing.

107 Contract Zoning

- A. An applicant for contract zoning shall submit an application to the Planning Board on forms provided by the City with the following information and/or fees:
 - (1) A plot plan showing the following:
 - (a) Location of the property proposed for development and its boundaries and dimensions.
 - (b) Location and dimensions of existing and proposed buildings or other structures.
 - (c) The lines of existing and proposed streets, driveways, parking facilities and sidewalks.
 - (2) A detailed statement of the proposed use of the property.
 - (3) A statement setting forth the precise zoning change requested.

- (4) A statement setting forth the conditions or restrictions which the applicant proposes to be applied as a condition of the proposed rezoning. The Planning Board may recommend further conditions or restrictions as outlined in Section 107(4).
 - (5) A non-refundable application fee in such amount(s) as the City Council may from time to time establish in the City Fee Schedule. The fee shall be paid at the time the application is filed with the Planning Board.
 - (6) A consulting and review fee in such amount as the City Council may from time to time establish in the City Fee Schedule. The fee shall be placed in escrow with the City at the time the application is filed with the Planning Board. The fee shall be used by the City in accordance with Section 500.8 Consulting and Review Fees; Inspection Fees of the Land Use Ordinances.
 - (7) Evidence of right, title or interest in the property.
 - (8) Additional Information
 - (a) Traffic Impact Study/Assessment:
 - (i) The applicant must submit a traffic study for all projects that will require a Traffic Movement Permit from the Maine Department of Transportation (MDOT). At a minimum, the traffic study must provide all information set forth in Section 7 of MDOT's Rules and Regulations Pertaining to Traffic Movement Permits, as may be amended from time to time. The Planning Board or City Council may require additional information in the traffic study during the application review process.
 - (ii) For projects that will not require a Traffic Movement Permit from the MDOT, the Planning Board or City Council may request a traffic study or traffic assessment as part of the application. The Board or Council will determine the parameters of the traffic study or traffic assessment as part of the application review process.
- B. Pursuant to 30-A M.R.S.A. section 4352, contract zoning is authorized where, for such reasons as the unusual nature or unique location of the development proposed, the City Council finds it necessary or appropriate to impose, by agreement with the property owner or otherwise, certain conditions or restrictions relating to the physical development or operation of the property, which are not generally applicable to other properties similarly zoned. All rezoning under this section shall establish rezoned areas, which are consistent with the existing and permitted uses within the original zones. All such rezoning shall be consistent with the City's Comprehensive Plan.
- C. The Planning Board shall conduct a public hearing prior to any property being rezoned under this section. Notice of this hearing shall be posted in the municipal office at least 13 days prior to the hearing and shall be published in a newspaper of general circulation within the City at least two times, the first publication to be at least seven days before the hearing. Notice shall also be sent to the owners of all property within 500' of the property to be rezoned, any public drinking water supplier if the area to be rezoned is within its source protection area, and to the owners of property proposed to be rezoned. This notice shall include a map indicating the area to be rezoned and a copy of the proposed conditions and restrictions. The applicant shall be responsible for all fees incurred in the notification of the public hearing.

- (1) The City Council will also hold a public hearing prior to any property being rezoned under this section. Notice of this hearing shall be published in a newspaper of general circulation within the City at least two times, the first publication to be at least seven days before the hearing. The applicant shall be responsible for all fees incurred in the notification of the public hearing.
 - (2) The Recreation and Conservation Commission shall review the project and make a recommendation to the Planning Board. Upon receipt of the application, the Commission shall have thirty (30) days to make its recommendation to the Planning Board. If no recommendation is received by the Planning Board within the thirty (30) day period the Planning Board may proceed with a public hearing without the recommendation.
- D. Conditions and restrictions imposed under the authority of this section may include, by way of example:
- (1) Limitations on the types and number of uses permitted.
 - (2) Restrictions on the scale and density of development.
 - (3) Specifications for the design and layout of building and other improvements.
 - (4) Schedules for the commencement and completion of construction.
 - (5) Preservation and creation of open space and buffers, and protection of natural areas and historic sites.
 - (6) Contributions toward the provision of municipal services generated by the development.
 - (7) Performance guarantees adequate to secure completion and maintenance of improvements, and guarantees against defects.
 - (8) Provisions for enforcement and remedies for breach of any condition or restriction.
- E. All development receiving a contract rezoning is not exempt from the otherwise applicable standards in Section 500 Westbrook Subdivision and Site Plan Review Standards.
- F. No proposal to amend the official zoning map shall be entertained within one year from the date of denial of the same request, unless the Planning Board determines that the application is a substantial change from the previously denied rezoning application.

Chapter II General Provisions

201 Definitions.

Terms used in this Ordinance are defined as follows (Please note that Ordinances in Chapter IV may have their own definitions):

Abutter. The owner of land sharing a common boundary or corner with a site, parcel of land, or lot on which activity is proposed that is regulated by this ordinance.

Accessory Apartment. Accessory apartments are a permitted use in all Districts where residential units are allowed and are subject to the approval of the Code Enforcement Officer and adherence to the following standards:

- A. The owners of the principal structure must reside in the principal structure or the accessory unit.
- B. The number of occupants of the accessory unit is limited to two.
- C. The accessory unit shall contain up to a maximum of 800 square feet of living space.
- D. The septic system on the property in question shall be functioning properly at the time of application for building permit approval. In addition, the applicant must submit a new HHE-200 form as documentation that another area of suitable soil exists on the property to be used for septic system repair in the event of failure of the original system.
- E. The parking requirements of the Westbrook Land Use Ordinance section 505.1 shall be adhered to.
- F. Proper ingress and egress shall be provided to the accessory unit. If this creates a third unit then an automatic sprinkler system shall be installed.
- G. Should the owners of the principal structure be found in noncompliance with the standards contained in this section, the noncompliance shall be considered a violation of this code and subject to the fines and penalty section, and the accessory unit shall be discontinued, and the structure shall revert to single family use.
- H. An accessory apartment which complies with the requirements of this subsection shall not be considered an additional dwelling unit when calculating Residential Density per Dwelling Unit under the space and bulk regulations of the Code.
- I. Only one accessory apartment per principal structure shall be permitted on a lot.
- J. The HHE-200 form, after review and approval by the Code Enforcement Officer, shall be recorded at the Cumberland County Registry of Deeds.

(Ord. of 11-17-14)

Accessory Use. A structure or use which is subordinate and incidental to, and serves a permitted use; and is located on the same lot as the principal structure or use; except as otherwise expressly provided in this Ordinance. In no case shall an accessory use dominate in area, extent, or purpose, the principal lawful use or structure. In all cases, accessory uses shall meet the same performance standards of this ordinance as principal uses. The keeping of bees or domesticated animals typically associated with farms shall be allowed as an accessory use to a principal residential use on the same lot, provided that (1) the keeping of such animals separately regulated in the Code of Ordinances is done in accordance with those regulations; and (2) the keeping of such animals is not done for commercial purposes. The keeping of bees as an accessory use shall comply with the requirements set forth in the Code of Ordinances. (Ord. 03-03-08)

Adult Daycare. An adult daycare center licensed by the State of Maine for providing daycare services to adults who are mentally disadvantaged or incapacitated in some way that requires such services.

Aquifer. A geologic formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water.

Aquifer Recharge Area. A primary or secondary recharge area composed of porous material or rock sufficiently fractured to allow infiltration and percolation of surface water and transmission of it to aquifers.

Asphalt plant. An industrial facility used for the production of asphalt, or asphalt products, used in building or construction, and includes facilities for the administration or management of the business, the stockpiling of bulk materials used in the production process or of finished products manufactured on the premises and the storage and maintenance of required equipment, but does not include the sale of finished asphalt products to the general public. (Ord. of 6-7-10 (effective as of 3-24-08))

Automobile Dealership. A retail business primarily housed in a structure and characterized by a mixture of related uses upon a commercial parcel; however, the principal use of the parcel shall be the marketing of new and used automobiles, where by sale, rent, lease, or other commercial or financial means. Secondary supporting uses may also exist upon the same site, such as maintenance, repair and service areas, parts storage areas, and financial service areas. (Ord. of 6-23-14)

Automobile Repair Service. A business for the purpose of vehicular repair, where the sale of petroleum products is also permitted. Services may also include so-called quick lube services and other specialty auto repair. (Ord. of 11-17-14)

Bank Class 1. A bank or similar financial institution with one or more drive-up windows, including ATM machines, whether attached or unattached.

Bank Class 2. A bank or similar financial institution where drive-up windows are not permitted, although an attached walkup ATM is permitted.

Base Flood. A flood having a one percent chance of being equaled or exceeded in any given year, as defined by Flood Insurance Rate Maps.

Base Site Area. Area of a lot of land in square feet.

Bed and Breakfast Class 1. A dwelling in which not more than 10 rooms are rented on a daily basis, and where meals may be provided. (Ord. of 11-19-12)

Bed and Breakfast Class 2. A dwelling occupied by the owner as his principal place of residence where not more than 5 rooms are rented on a daily basis, and where meals may be provided.

Buffer Zone. Area of undeveloped or landscaped land, measured in horizontal distance, used to provide separation between conflicting uses.

Building. Any structure having a roof, partial roof supported by columns or walls used or intended to be used for the shelter or enclosure of persons, animals or objects regardless of the materials of which it is constructed.

Business Office. A facility used by a commercial, financial, professional, or government enterprise or establishment. For the purposes of this ordinance, the definition of a business office includes research and development facilities and limited production or manufacturing operations wherein the office function is the primary activity, and printing and publishing operations.

Business Office 2. A facility used by a financial, professional or government enterprise or establishment during usual business hours that only performs functions generally found in an office setting. This includes the use of desks, files, computers, photocopying machines, desktop printers and similar equipment. General business activities may not be conducted outside of the structure in which the office is located. For the purposes of this ordinance, the definition of a business office 2 does not include research and development facilities, limited production or manufacturing operations, or printing and publishing operations. In addition, these specifically excluded activities may not be permitted as an accessory use to the primary business office functions. (Ord. of 02-05-07)

Campground. A tent park or recreational vehicle park where individual lots of no less than 10 x 15 feet are rented on a daily basis. Said parks shall provide for camping amenities, have access roads approved by the Fire Department, and have a plan for the elimination of sewage from individual units. Parks are subject to site plan review.

Car Wash. The use of a site for washing and cleaning of passenger vehicles, recreational vehicles, or other light duty equipment.

Cemetery. Land used for the burial of the dead, and dedicated for cemetery purposes, excluding a columbarium, crematories, mausoleums, and mortuaries.

Child Care Center. A building in which daycare and educational programming for children up to kindergarten age is provided. This definition also includes any day care center that has over 10 children, including older children in after-school programs. Such a facility shall be consistent with Maine licensing statutes. (Ord. of 4-5-10)

Church. Any structure used for worship or religious instruction, including social and administrative rooms accessory thereto.

Club or Lodges. An association of people for social or recreational purposes, or for the promotion of some common objective. The use of common property owned by the association, which can include the serving of food or alcohol.

Coastal Wetlands. Any swamp, marsh, bog, beach, flat or other land above extreme low water which is subject to tidal action or as otherwise identified on the basis of soils, vegetation or other similar criteria.

Commercial Service Business. An establishment or place of business primarily engaged in selling and/or distributing merchandise to retailers and not to the general public; to industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies. This use may involve the repair of such merchandise. This is not considered a general commercial use. (Ord. of 6-7-10 (effective as of 3-24-08))

Community Center. A common building, place, area or other facility, publicly managed, which provides a focus for the recreational, educational, social or cultural needs of the community. Services may be provided by for-profit entities. (Ord. of 11-19-12)

Congregate Care Facility. A multiple family dwelling occupied by people in a shared living environment. Such facilities shall consist of individual apartment units, shared community space, shared dining facilities, appropriate recreational facilities and required care services based on individual need.

Contract Zoning. “Contract Zoning” means the process by which the municipal legislative body may rezone property to permit the use of that property subject to conditions not generally applicable to other properties similarly zoned. (Ord. 08-21-06)

Cutoff luminare. A complete lighting unit with elements such as shields, reflectors, or refractor panels which direct and cut off the light at an angle of less than 90 degrees. The angle is formed by a line perpendicular to the ground moving up 90 degrees to the point of cutoff.

Day Care Center. A dwelling or facility in which day care is provided for between 4 and 10 children under the age of 16, licensed in accordance with state statute.

Donor Site. *Repealed.* (Ord. of 11-17-14)

Dwelling; Manufactured Housing. A structural unit designed for occupancy, and constructed in a manufacturing facility and then transported by the use of its own chassis, or placed on an independent chassis, to a building site. For purposes of this definition only, the following two (2) types of manufactured housing are permitted:

(1) Those units constructed after June 15, 1976, commonly called "newer mobile homes", which the manufacturer certifies are constructed in compliance with the United States Department of Housing and Urban Development standards. These standards mean structures transportable in one or more sections, which, in the traveling mode, are fourteen (14) body feet or more in width and seven hundred and fifty (750) or more square feet in area, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air conditioning, and electrical systems contained therein; except that the term shall include any structure that meets all the requirements of this paragraph, except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401, et seq. as amended.

(2) Those units commonly called "modular homes," which the manufacturer certifies are constructed in compliance with Maine's Manufactured Housing Act and regulations. Meaning structures, transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required facilities, including the plumbing, heating, air conditioning or electrical systems contained therein.

Dwelling, Multiple Family. A structure consisting of three (3) or more attached dwelling units.

Dwelling, Single Family. A detached structure consisting of one (1) dwelling unit.

Dwelling, Two Family. A detached structure consisting of two (2) dwelling units.

Dwelling Unit. A room or group of rooms providing, or intending to provide, living quarters containing independent cooking, sleeping, and bathroom facilities for one (1) household.

Education Facility. A public, private or church-affiliated establishment for the education at all levels of children and/or adults in subjects or skills.

Elder Apartment. *Repealed.* (Ord. of 11-17-14)

Emergency Operations. Operations conducted for the public health, safety or general welfare. These include protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury.

Extractive Industry. Industry engaged in the extraction of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and the transport of the product away from the site of extraction.

Farm. The definition of 'Farm,' 'Farm operation,' and 'Farm product' is determined by the most current definition in Title 17 M.R.S.A., Chapter 91, Subchapter 3, Section 2805.1.A-C.

Flag Lot. A lot so shaped and designed that the main building site area is set back from the public street on which it fronts and includes an access strip connecting the main building site with the frontage street. The creation of flag lot is only permitted on public streets. (Ord. of 4-5-10)

Floodway. The channel of a river, or other watercourse, and adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

Floor Space. Area used for retail sales, not including storage space.

Florist. A retail business whose principal activity is the selling of plants which are not grown on the site and conducting business within an enclosed building.

Food Cart Vendor. An outdoor vendor operating from a portable facility located on a given site, licensed with the City, and selling products including, but not limited to, prepared or unprepared food. This definition does not including flea markets or the sale of general merchandise.

Footprint. The area within the exterior limits of the base of a structure.

Freshwater Wetland. "Freshwater wetland" means freshwater swamps, marshes, bogs and similar areas which are:

- A. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and
- B. Not considered part of a great pond, coastal wetland, river, stream or brook.

These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

Front Lot Line. That line which separates the lot from a public or private right-of-way. On a corner lot, the front lot line is the line along the most traveled way as determined by the Code Enforcement Officer. The Code Enforcement Officer may determine, where a lot fronts on more than one right-of-way, that each right-of-way may be used to establish minimum lot width.

Funeral Home. A building used for the preparation of the deceased for burial and display of the deceased and rituals connected therewith before burial or cremation. A funeral home, as defined for purposes of this code, includes a funeral chapel.

Golf Course. A tract of land laid out with at least nine holes for playing a game of golf and improved with tees, greens, fairways and hazards. A golf course may include a club house, restrooms, driving range, and shelters as accessory uses.

Greenhouse. A building inside which plants are grown, all or part of which are sold at retail or wholesale.

Grocery Store. A commercial enterprise engaged in the production, preparation and sale of staple foodstuffs, household supplies and usually meats, produce and dairy products.

Hazardous Matter. Substances identified by the Maine Board of Environmental Protection under Title 38 M.R.S.A., Section 1319, as amended.

Height of Structure. The vertical distance measured from the lowest ground elevation at the base of a structure to the highest point on the structure, except as noted in Section 202.4.

Home Day Care Provider. A person who provides day care in that person's primary residence, on a regular basis, for 3 to 12 children under 13 years of age who are not the children of the provider. (Ord. of 11-17-14)

Hospital. An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, deformity, and other abnormal physical or mental conditions and including as an integral part of the institution related facilities, such as laboratories, outpatient facilities, training facilities, medical offices, and staff residences.

Hotel, Motel. A structure providing lodging, for a fee, on a daily basis. Accessory uses may include restaurants, meeting rooms, function halls, and associated recreation facilities. For purposes of this ordinance, a Hotel/Motel shall include any lodging structure consisting of one (1) unit or more per lot. Hotel units that have cooking and sleeping facilities, commonly referred to as efficiency units or suites, shall be rented on a daily basis for short-duration lodging.

Household. A family or a group of unrelated person(s), who live in a dwelling unit that meets the standards and codes of the City of Westbrook.

Impervious Surface. A surface which does not absorb water including, but not limited to, buildings, parking areas, driveways, roadways, sidewalks, and any areas of concrete or asphalt. Land used for outside storage, unless the ground surface is of sufficient porosity to minimize surface water runoff, shall be deemed to be impervious surfaces.

Industry. For-profit or commercial enterprises engaged in the production and sale of goods, generally manufactured, and services which must operate within the minimum performance standards outlined for the appropriate zoning district. (Ord. of 03-07-05)

Junkyard. A facility that meets the definition set forth in 30-A M.R.S.A. Sec. 3752. (Ord. of 6-7-10 (effective as of 3-24-08))

Landscaping. Grass, shrubs, trees, flowers, or other comparable surface cover, and any existing vegetative land.

Landscaping Factor. Required landscaping as a percentage of the base site area.

Leachable materials. Liquid or solid materials including solid wastes, sludge, and agricultural wastes that are capable of releasing water-borne contaminants into the ground or existing water bodies.

Level of Service. A technical measure assessing the impact of traffic, generated from new or expanded uses, on the transportation network.

Library. A public and/or non-profit facility in which literary, musical, artistic or reference materials are kept for use but not normally for sale. Community events and social services may also be offered.

Lot Frontage. The distance of the front lot line. (Ord. of 11-17-14)

Lot Width. The width of a lot measured along the front lot line between the points of intersection of the side lot lines with the front lot line on a public or private right-of-way. On a corner lot, the minimum lot width must be measured along the most traveled public or private right-of-way, unless there are unique circumstances. (Ord. of 11-17-14)

Manufacturing. Manufacturing uses/activity involving the manufacturing, fabricating, packaging, processing or assembly of finished products from previously prepared material, such as bottling, printing and publishing, machine shops, precision tools and instruments, assembly of electrical or electronic components, tool and die shops. In no event shall this include the processing of raw materials other than as permitted in the Manufacturing District (Sec. 311). (Ord. of 6-7-10 (effective as of 3-24-08))

Marine Construction. Construction including marinas, piers, decks, wharves, breakwaters, causeways, bridges and other uses projecting into shoreland zoning areas.

Maximum Footprint Factor. A measure of the intensity of land use measured in square feet by dividing the footprint of a building by the base site area.

Maximum Gross Density Factor. Intensity of use measured in square feet by dividing building footprint and impervious surface by the base site area.

Maximum Residential Density Factor. Intensity of use measured in square feet by dividing lot size by the number of dwelling units situated within the lot's boundaries.

Media Studio Class 1. A business engaged in the production of, but not limited to, radio, television, or cable casting, where there is no sale of retail goods.

Media Studio Class 2. A business engaged in the production of, or recording of, sound where no broadcasting is permitted and where sale of retail goods is secondary to the business.

Medical Office A building or portion of a building containing offices for providing medical services, including, but not limited to dental, psychiatric, physical therapy or chiropractic for out-patients only, but not including the sale of drugs. (Ord. of 03-07-05)

Minimum Lot Width. *Repealed.* (Ord. of 11-17-14)

Mobile Home Park. See Maine Title 30A MRSA Section 4358 Subsection 3 (Mobile Homes) and subsequent amendments. (Ord. of 11-17-14)

Municipal Facility. Any City facility provided to meet a municipal need. A municipal facility must meet district performance standards and is subject to the Site Plan Review process in Chapter V of this Ordinance.

Museum. A building having public significance due to its architecture or former use or occupancy or a building serving as a repository for a collection of lasting interest or value arranged, intended and designed to be used by members of the public for viewing with or without an admission charge.

Neighborhood Grocery. A grocery store having not more than 3,000 S.F. of total floor space. In permitting a neighborhood grocery, the Code Enforcement Officer shall determine if the facility has adequate parking (on or off site), is screened from residential neighbors, has screened exterior storage, meets minimum sign requirements and does not create negative traffic impacts.

Nonconforming Use. A nonconforming use is a lawful use of land, building or structure existing on the effective date of this Ordinance which does not conform to one or more of the requirements of this Ordinance.

Normal High Water Mark of Coastal Waters. That line on the shore at tidal waters reached by the shoreward limit of the rise of the median tides between the spring and the neap.

Normal High Water Mark of Inland Waters. That line on the shore and banks of non-tidal waters which is apparent because of the contiguous different character of the soil or vegetation due to the prolonged action of the water.

Nursing Home. A facility established for profit or non-profit, which provides nursing care and related medical services on a 24-hour per day basis to individuals due to illness, disease, or physical or mental infirmity. Provides care for those persons not in need of hospital care. For the purposes of this Ordinance, a nursing home shall include only those facilities which have been certified, or which will be certified prior to the issuance of any use permits, by the State of Maine Department of Health and Human Services as meeting all licensing and operation regulations for skilled nursing facilities or intermediate care facilities.

Parking Facility. A multi-story building or structure or a portion thereof in which motor vehicles or equipment are housed. Parking facilities may be public or private, but may not be used for commercial repair, sale or lease of motor vehicles.

Principal Structure. A structure in which the principal use of the lot on which it is located is conducted, or intended to be conducted.

Principal Use. The primary purpose for which land is used or intended to be used.

Private Recreation Facility. A non-municipal indoor or outdoor recreation facility, not including water slides, outdoor amusement centers, spectator sports facilities, race tracks, or other similar facilities.

Private Right of Way; Private way – A strip of land at least fifty feet wide, meeting the minimum standards for the construction of a gravel base for a public road, over which abutters may pass over. When abutting lots are held in other than single ownership, a road maintenance agreement must be established at the time of creation of the right of way, or at the time of the most recent sale of abutting land. Lots with no access to the private right of way are exempted from participating in the road maintenance agreement. A private way shall provide frontage for no more than three lots. Private ways in existence prior to May 1, 2007 shall continue to be able to build the number of lots allowed per the zoning district in which they are located. Private ways created or improved to serve lots developed with a principal structure for the first time after (date of passage) must meet the construction standards for private ways in Section 502.5C. (Ord. of 8-6-12)

Research and development. A laboratory or similar facility for investigation into the natural, physical or social sciences, which may include engineering and product development. Such use may not involve the mass manufacturing, fabrication, processing or sale of products. (Ord. of 6-7-10 (effective as of 3-24-08))

Restaurant Class 1. A restaurant whose principal business is the sale of food or beverages ready to consume where a drive-in window is permitted.

Restaurant Class 2. A restaurant where a drive-in window is not permitted, where food is the primary product and is served on the premises, and where alcoholic beverages may be served.

Restaurant Class 3. Drinking establishment: This means bars, bottle clubs, pubs, clubs, lounges, taverns, and other premises whose primary purpose is the sale or consumption of spirits, wine or malt liquor to be consumed on-premise. Typically, in serving primarily spirits, any such establishment offers few or limited food options. This term includes that portion of any restaurant where a room(s) is maintained separate from the main restaurant space, in which full course meals are not regularly served and where alcoholic beverages are sold at tables, booths, and counters and where the primary purpose of the separate room is for the sale of said spirits.

Retail Class 1. A business whose principal use is the retail sale of consumer goods, except for those listed in Retail Class 2 and Retail Class 3. (Ord. of 11-17-14)

Retail Class 2. A business that is primarily agricultural in nature, selling goods, products, and services which are essential to the economic vitality of the farm.

Retail Class 3. A business whose principal use is the wholesale or retail sale of building materials including, but not limited to, hardware, lawn and garden, fuel products other than gasoline, and small engine and appliance repair.

Retail Class 4. A business whose principal use is the retail sale of fuel with or without the retail sale of goods (e.g. Cumberland Farms, Big Apple). (Ord. of 11-17-14)

Right-of-Way. Either an existing city street, accepted and maintained by the City of Westbrook, an existing full access State road, a private way, owned in fee simple, or a proposed way within a previously platted subdivision that has been brought up to the standards for either a public street or private way in section 502.5C and thus established for the purposes of providing access and creating a front lot line. A private right of way shall be left as such unless the owner of that private right of way brings it to the level of City standards and the City Council votes to accept the private way as public. In building the private way, the minimum standards for the construction of the gravel base of a public road shall be used. (Ord. of 03-07-05)

River. A free-flowing body of water from a point providing drainage for a watershed of 25 square miles to its mouth.

Service Business. A business whose principal use is the provision of services including, but not limited to, barber shop, beauty salon, shoe repair, laundry service, or tailor shop.

Solid waste. Useless, unwanted, or discarded solid material with insufficient liquid content to be free flowing. This includes, but is not limited to, rubbish, garbage, scrap materials, junk refuse, inert fill material, recyclable goods, and landscape refuse. This definition does not including septic tank sludge and agricultural waste.

Special Exception. A use which is by policy permitted in a particular zoning district and consistent with the most recently adopted comprehensive plan; is neither a nonconforming use nor subject to a variance under customary circumstances; which is by policy considered to be of an essential or desirable nature for the general welfare of the community, and at the same time is not essentially incompatible with existing uses in the district, but not at every or any location therein or without restriction or conditions as may be imposed on the use.

Structure. Anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground, including, but not limited to, buildings, mobile homes, retaining walls, billboards, signs, piers and floats.

Subdivision. “Subdivision” means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term “subdivision” also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.

A. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless:

(1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider’s own use as a single-family residence that has

been the subdivider's principal residence for a period of at least 5 years immediately preceding the second division; or

- (2) The division of the tract or parcel is otherwise exempt under this subchapter.
- B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this ordinance, do not become subject to this subchapter by the subsequent dividing of that parcel. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.
- C. A lot of 40 or more acres must be counted as a lot. (Ord. of 11-17-14)
- D-1. A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.
- D-2. A division accomplished by condemnation does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.
- D-3. A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.
- D-4. A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. "Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph can not be given for consideration that is more than ½ the assessed value of the real estate.
- D-5. A division accomplished by a gift to a municipality, if that municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.
- D-6. A division accomplished by the transfer of any interest in land to the owners of land abutting that land that does not create a separate lot does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person without all of the merged

land, then the previously exempt division creates a lot or lots for the purposes of this subsection.

- E. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision.
- F. In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.
- G. Notwithstanding the provisions of this subsection, leased dwelling units are not subject to subdivision review if the municipal reviewing authority has determined that the units are otherwise subject to municipal review at least as stringent as that required under this subchapter.
- H-1. *Reserved.* (Ord. of 11-17-14)
- I. The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under paragraphs D-1 to D-6 or subsequent transfer of that entire lot by the original holder of the security interest or that person's successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

For the purposes of this section, a tract or parcel of land is defined as all contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

Substandard Lot of Record. A lot of record as defined by this Ordinance that was lawfully established prior to the effective date of this Ordinance which does not conform to one or more of the minimum lot size or dimensional requirements of this Ordinance.

Telecommunications Facility. Any system of wires, poles, rods, reflecting devices, or similar devices for the wireless transmission and reception of voice or data, attached to the exterior of a building or structure. (Ord. of 3-3-14)

Telecommunications Tower. Any structure designed and constructed primarily for the purpose of supporting one or more telecommunications antenna, including but not limited to monopoles, guyed towers, and lattice towers. (Ord. of 3-3-14)

Theater. A building, or part of a building, used to show motion pictures or for drama, dance, musical or other live performances.

Timber Harvesting. The cutting and removal of trees from their growing site and the attendant operation of cutting and skidding machinery, but not the construction or creation of roads or the clearing of land for approved construction.

Unusable Land. An environmentally sensitive area which if disturbed or destroyed, can adversely affect unique ecological balances in the environment. Although specific areas require a case-by-case analysis, the following factors may be included in the determination of unusable land:

- A. Areas of slope in excess of 25%,
- B. Areas of very poorly drained soils, experiencing year-round water within 15" of the surface as identified by the most current version of the "Soil Survey: Cumberland County, Maine", Soil Conservation Service,
- C. Any area identified as a wetland by the State of Maine in accordance with maps developed as part of the Casco Bay Evaluation program. The wetland area has been identified as having one or more critical purposes as determined by a licensed soil scientist of the State of Maine during a site evaluation,
- D. Any area within the 100-year flood boundary, as delineated on the Flood Insurance Rate Map of the National Flood Insurance Program,
- E. Unique wildlife areas as identified in the review process,
- F. Unique wildlife areas as identified in the review process or by the State of Maine's botanical or natural areas programs.

Utilities. All facilities, public or private, related to the provision, distribution, collection, transmission, or disposal of water, storm and sanitary sewage, oil, gas, heat, steam, power, information, telecommunications and telephone cable, and includes facilities for the generation of electricity. (Ord. of 6-7-10 (effective as of 3-24-08))

Veterinary Clinic. A place where animals or pets are given medical or surgical treatment and are cared for during the time of such treatment. Use as a kennel shall be limited to short-time boarding and shall be only incidental to such hospital use.

Vocational Educational Facility. A public or private facility providing educational instruction in skilled trades such as mechanics or carpentry. (Ord. of 6-7-10 (effective as of 3-24-08))

Warehousing. A use engaged in the storage and transport of products manufactured elsewhere. (Ord. of 6-7-10 (effective as of 3-24-08))

Yard. A space which may be occupied only by steps into or out of a principal structure, a fence, wall, or other yard accessories, landscaping for screening purposes, and by a driveway.

Yard Setback. The minimum space in which a primary or accessory structure must be placed away from the appropriate lot line.

Yard Setback, Front. An open space extending the width of a lot, from sideline to sideline, between the front lot line and the nearest part of a building on the lot.

Yard Setback, Rear. An open space in the rear of the yard extending the width of a lot from sideline to sideline, between the rear lot line and the nearest part of a building on the lot. A corner lot has no rear yard.

Yard Setback, Side. An open space extending along a sideline of a lot from the front yard to the rear yard between the sideline and the nearest part of a building on the lot.

202 General Provisions.

The following general regulations apply to this Ordinance.

- 202.01 **Accessory Apartment.** A secondary dwelling unit established in conjunction with and clearly subordinate to a primary dwelling unit, whether a part of the same structure as the primary dwelling unit or a detached dwelling on the same lot. (Ord. of 11-17-14)
- 202.1 **Clustering.** The clustering of housing subdivisions is permitted in all districts where residential housing is permitted. As part of the clustering design, the Planning board is permitted to reduce minimum lot widths, minimum yard depths and lot sizes. The Board may provide for zero lot lines where the units being created within the project are to be attached, provided that multiple family units are permitted in that district. While internal setbacks may be reduced, the setbacks for the zoning district must be maintained from abutting property owners. The reduction of setback requirements shall be part of the subdivision or site plan review process before the Planning Board. Maximum Residential Density Factors provided for each residential zone, as well as all other performance standards, must be adhered to. All other applicable requirements of the subdivision and site plan review processes in Chapter V shall be followed.
- 202.2 **Congregate Care Facilities.** Congregate care facilities shall meet the following requirements:
- A. Age. All facilities shall house persons of 55 years of age or older or in accordance with one of the following exception:
 - (1) Where at least one living mate is at least 55 years old or more,
 - (2) Where a person less than 55 years of age has a physical disability which necessitates congregate care living.
 - B. Typical Dwelling Unit. The typical dwelling unit in a congregate care facility shall have a minimum habitable space of 500 S.F.
 - C. Residential Density Factor. A congregate care facility shall have a density factor of at least one (1) dwelling unit per 5,000 S.F.
 - D. Shared Dining Services. The facility shall have a central dining facility for all residents, providing at least one (1) meal per day per person.
 - E. Personal Care and Housekeeping. Limited personal care and assistance as well as housekeeping services may be made available to all residents upon request.
 - F. Medical Services. Specialized shared services related to medical support and physical therapy shall be made available to all residents. At least one registered or licensed nurse shall be available 24 hours per day.
 - G. Parking. One and one-fourth spaces shall be provided for each dwelling unit.
 - H. Services and Shops. Any service and retail shops shall be designed as an integral part at the building. Such facilities shall be designed for use by the residents and not to serve those living outside the facility.
 - I. Recreation Areas. A recreation plan, incorporating indoor and outdoor activities, shall be included as part of the congregate care facility. Such a plan shall include both passive and active recreation and may be incorporated into any open space or landscape factor.

- 202.3 **Dwelling Unit Ownership.** Nothing in this Ordinance precludes the subdivision of buildings into units, either attached or detached, on a single lot, provided that the performance standards of the zone are met and that the application receives subdivision and/or site plan review. An applicant must submit to the Westbrook Planning Board for approval all legal documents related to unit associations, ownership in common and appropriate by-laws, deeds and covenants. The applicant shall record all such documents, along with the subdivision and/or site plan, in the registry of deeds.
- 202.4 *Reserved.* (Ord. of 11-17-14)
- 202.5 **Exceptions to Height Limitations.** Height restrictions do not apply to chimneys, air conditioning systems, skylights, and other necessary appendages to a permitted use which are usually constructed above the roof line, except that their height is restricted to 10 feet above the roofline.
- 202.6 **Extractive Industry.** Industry engaged in the extraction of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and the transport of the product away from the site of extraction must meet the following requirements:
- A. Top soil, rock, sand, gravel and similar earth materials may be removed from locations where permitted under the terms of this ordinance only after a special permit for such operations has been issued by the building inspector upon approval by the Planning Board and review of plans by the Planning Board in accordance with the provisions of this ordinance, and provided that:
 - (1) Specific plans are established to avoid hazards from excessive slopes or standing water. Where an embankment must be left upon the completion of operations, it shall be at a slope of not steeper than one-foot vertical to two (2) feet horizontal,
 - (2) The operation is shielded from surrounding property with adequate screening and creates no disturbance of a water source, and when terminated shall not detract from the appearance or value of nearby property,
 - (3) No excavation shall be extended below the grade of adjacent streets unless one hundred (100) feet from the street line or unless provision has been made for reconstruction of the street at a different level, and the edge of all workings shall be set back from the property line a minimum of one hundred (100) feet,
 - (4) Sufficient topsoil or loam shall be retained to cover all areas, so that they may be seeded and restored to natural conditions,
 - (5) A surety bond is posted with the treasurer of the city by the applicant in an amount recommended by the city engineer and approved by the Planning Board as sufficient to guarantee conformity with the provisions of the grant of approval.
 - B. The plan review by the Planning Board shall take into consideration the following items. The Board may impose such conditions as necessary to safeguard the health, safety and welfare of the community:
 - (1) Fencing, landscaped buffer strips, public safety,
 - (2) Advertising signs, lighting,
 - (3) Parking space, loading and unloading areas,
 - (4) Entrances and exits,
 - (5) Time period for operation,

- (6) Hours of operation,
- (7) Methods of operation,
- (8) Weight and loading limit of trucks,
- (9) Sand and gravel spillage upon public streets,
- (10) Rehabilitation proposals,
- (11) Ecological and other natural considerations.

C. Blasting must be conducted in compliance with the requirements of Title 38 M.R.S.A. §490-Z(14).

202.6.1 **Flaglots.** To permit the construction of no more than one principal building on flaglots, as defined herein, subject to the following:

- (1) Such lots, exclusive of the minimum 50' wide access strip shall have at least the minimum lot area required for the zoning district in which it is located.
- (2) A building shall not be so located on the property as to preclude future dedication and/or construction of a street according to city specifications as set forth in the Westbrook Code of Ordinances to service the subject flaglot, abutting parcels and other nearby inaccessible parcels.
- (3) No additional development shall be allowed on the subject flaglot until a street or public way is constructed to specifications as provided in the Westbrook Land Use Ordinances to meet the street frontage requirements of that zoning district.
- (4) Any construction shall meet the performance standards of the underlying zoning district. Setbacks shall be measured from the edge of the buildable area of the lot.
- (5) All flaglots must have a minimum width of 50' on a public street. The 50' wide minimum access strip must be maintained the entire depth of the lot and no structure may be constructed within the access strip. No variance shall be granted from this requirement.
- (6) The Code Enforcement Officer may approve a shared driveway with an abutting lot with frontage on the same public street as the flaglot. Lots with shared driveways must separately meet the 50-foot width requirement established in subsection 6 of this Section and approval of a shared driveway shall not constitute a waiver of this requirement. An applicant for a flaglot who seeks approval of a shared driveway shall show evidence of a permanent easement creating the shared driveway.
- (7) If the creation of the flaglot creates a subdivision as defined in Section 201.87 of this Ordinance, the application must receive subdivision approval from the Planning Board in accordance with Chapter V of the Westbrook Land Use Ordinances. (Ord. of 4-5-10)

202.7 **Foundation.** A wall below the floor near or at grade which serves as a structural support for a wall, pier, column or other part of a building, or the wall of a basement that resists lateral soil load. (Ord. of 03-07-05)

202.8 **Greenhouse or Florist.** A horticultural business where products may be grown on the premises, within greenhouses, and where the products may also be sold on the premises.

202.9 **Home Day Care Provider, Day Care Center and Child Care Center Review.** For zoning districts in which a special exception review is not required, the Code Enforcement Officer must approve all applications for Home Day Care Providers and Day Care Centers, as defined in this Ordinance. Code Enforcement Officer approval is also required whenever a Home Day Care Provider, Day Care Center or Child Care Center expands its enrollment beyond the enrollment number for which it was approved. In addition to the zoning district, Special Exception and/or Site Plan Review criteria, the following additional criteria shall be used:

- A. A minimum of 50 S.F. of dedicated outdoor play area shall be required for each child,
- B. All play areas shall be enclosed by a minimum of four (4) foot fencing,
- C. A combination of fencing with plantings, shall be installed such that the area is screened from abutting residential properties in terms of both sight and noise,
- D. One (1) off street parking space shall be provided for each employee or volunteer, and one (1) off street parking space for every 6 children shall be provided,
- E. The parking area shall be in a safe location, shall include an area for snow storage, and shall permit the parent to move directly to the entrance for the loading and unloading of children without affecting the movement of other vehicles,
- F. The proposed facility shall not burden on-site septic or offsite waste disposal.
- G. There shall be toilet facilities on every floor of the facility. Where the facility is a Home Day Care Provider separate toilet facilities shall be provided for the residential and facility uses,
- H. All facilities shall demonstrate that they meet the requirements for licensing by the state and shall provide proof of state licensure prior to issuance of a Certificate of Occupancy and shall meet all sanitary, plumbing code, fire code, and building code requirements, as identified by the Code Enforcement Officer
- I. Based on location, area traffic, and neighboring uses, the Code Enforcement Officer or Planning Board may set the hours of operation, and
- I. If the operator of the facility is not the owner of the property on which the facility will be located, the operator shall provide evidence of the property owner's consent to the facility. The operator shall also provide proof of interest in the property, such as a deed or lease.

(Ord. of 01-08-07; 4-5-10; 11-17-14)

202.10 **Home Occupation.** An occupation carried on by residents of a dwelling unit where:

- A. The occupation is clearly secondary to the principal use of the dwelling unit,
- B. Only two people other than family members residing on the premises may be employed,
- C. There must be no change to the outside appearance of the building or premises, other than one non-illuminated sign of not more than four square feet,
- D. The home occupation use is limited to 500 S.F. of the enclosed building area,
- E. Any parking provided by the owner must be off-street, exclusive of any yard setback, and be screened from any neighbor,
- F. If renting or leasing, tenant must have permission from the owner, and

- G. No more than two (2) pieces of commercial equipment shall be permitted, and this equipment must be able to meet the performance standards of the particular zoning district within which the structure exists. The commercial equipment must be contained and used entirely within the dwelling unit or accessory structure.
(Ord. of 03-07-05)

202.11 **Land Partially in other Municipalities.** When a lot is situated partially in the City and partially in another municipality, this Ordinance must be applied to the part of the lot in Westbrook without regard to the spatial impact of the municipal boundary.

202.12 **Land Surveyors.** Where this Ordinance requires a land surveyor, he/she must be registered and licensed in accordance with Maine law.

202.13 **Lot.** A lot is a parcel of land of at least sufficient size to conform to minimum zoning requirements for use, coverage, and associated factors, and to provide such yards and other open spaces as are herein required. The lot must have the minimum lot width for its particular zoning district fronting on a public or private right-of-way, and may consist of:

- A. A single lot of record,
- B. A portion of lot of record,
- C. A combination of lots of record, or portions of lots of record,
- D. A parcel of land described by metes and bounds, or
- E. A parcel of land divided by a private or public right-of-way, provided that in the case of a subdivision or combination of lots no remaining lot or parcel shall be created which does not meet the requirements of this Ordinance.

202.14 **Lot Partially in Two Districts.** When a lot is bisected by a district boundary, the following regulations apply:

- A. The provisions of the zoning district in which the larger portion of the lot lies, to be known as the primary district, govern the use of the lot.
- B. In the determination of the base site area, land in both zones may be used in arriving at an appropriate maximum footprint factor, maximum gross density factor, and landscape factor, provided that uses permitted in the primary district extend no more than thirty (30) feet into the adjacent zoning district.

202.15 **Lot of Record.** A parcel of land with ascertainable boundaries described in a recorded deed in a subdivision plan approved by the Planning Board, and meeting prior zoning requirements at the time this Ordinance was adopted.

202.16 **Lots Under Common Ownership.** Adjacent lots owned by the same person are deemed to be separate lots for the purpose of this ordinance, provided that they were pre-existing lots prior to this ordinance, and unless the owner chooses to legally combine them in one deed.

202.17 **Manufactured Housing on Individual Lots.** Before manufactured housing may be located on an individual lot outside of a manufactured housing park, it must have a conventional pitched roof consistent with the surrounding neighborhood, a permanent foundation, and exterior siding that is consistent with the appearance of dwelling units in

the neighborhood. The construction must be in conformance with all applicable state and local codes.

202.18 **Multiple-Family Structures and Special Exceptions.** In addition to the performance standards of Section 204, the following standards are required to be met in granting a special exception for a multiple-family structure:

- A. Entryways shall be located and consolidated in such a manner so as not to impact surrounding residential properties. One driveway access point shall be used unless, for safety reasons, multiple points of entry are deemed necessary,
- B. No deck, entryway, patio area, or recreational area for a multiple-family structure shall be within 8 feet of a single-family structure property line,
- C. Where adjacent to existing residential structures, there shall be no exterior stairs, decks, or porches above the second story of the structure,
- D. When adjacent to existing single-family structures, all parking, exterior storage and recreation areas shall be screened,
- E. No exterior lighting from the multiple-family structure shall extend across the property line into an adjacent neighbor's yard.

202.19 **Net Residential Acreage.** The net area of any site suitable for residential development. The net residential density shall be determined by subtracting the unusable land defined in Section 201.87 from the gross acreage of the site.

- A. Cluster Subdivisions. In the case of cluster subdivisions, buildable land dedicated as open space may be used in determining the net residential density of the site.
- B. Site Plan. In the case of projects in the site plan review process, buildable land dedicated as open space may be used in calculating the net residential density of the site.

202.20 **Odor Threshold.** When addressing odor impact relative to zoning district restrictions, odor measurement will be described as the odor threshold. Odor threshold may be described as the concentration in air of a gas or vapor which will evoke a response in the human olfactory system.

202.21 **One Unit, One Household.** In dwellings, the number of households in residence shall not exceed the number of dwelling units provided.

202.22 **Only Permitted Uses Allowed.** A structure may not be constructed or used, and land may not be used or divided, except in accordance with this Ordinance. All other construction, use or division of land or buildings is expressly prohibited except that which is already lawfully existing at the time this Ordinance is enacted.

202.23 **Owner/ Lessee.** The regulations pertaining to an owner of property also pertain to a lessee.

202.24 **Person.** The regulations pertaining to a person apply also to a partnership, corporation, or any other legal entity.

202.25 Provisions Applicable to All Zones. The following provisions, apply in all districts:

- A. **Road Construction Standards.** Street construction as required by this Ordinance must meet the standards stated in 502.5.
- B. **Parking and Loading.** Unless otherwise specified for a particular district, the parking and loading standards required by this Ordinance must meet the standards set forth in Sections 505.1-2.
- C. **Recreation or Open Space.** The requirements for recreation and open space for new housing construction must meet the standards set forth in Section 502.6 of this Ordinance.

202.26 Public Records. All documents and records required by this Ordinance are public records, according to state statute.

202.27 Special Exception or Variance-Order of Precedence.

- A. Where permission to exercise a use requires a special exception as well as site plan or subdivision review, the applicant may receive review from the Planning Board for the special exception at the same time as the application is reviewed for subdivision or site plan approval, unless specifically stated otherwise in this ordinance.
- B. Where permission to exercise a use requires a variance, as well as site plan or subdivision review, the applicant must receive approval from the Zoning Board of Appeals for the variance before application is made for subdivision or site plan approval, unless specifically stated otherwise in this ordinance.

202.28 Structure. The regulations pertaining to buildings apply also to all other structures, except where the application would be unreasonable, as determined by the Code Enforcement Officer. However, a structure of 140 square feet or less must be set back at least 5' from nearest lot line. All structures require a building permit. (Ord. of 11-17-14)

202.29 Structure Destroyed by Fire. When a structure housing a non-conforming use is destroyed by fire, the owner of the structure has one year to restore it to its original condition or lose any vested rights in the non-conforming use. If at any time the structure becomes dangerous, as determined by the Code Enforcement Officer, then the City may remove that structure and bill the owner for the costs. This provision shall not apply to non-conforming structures located in the Shoreland Zone. (Ord. of 12-13-05)

202.30 Telecommunications Facilities. Telecommunications facilities shall meet the following requirements:

- A. **General Review Requirements.** All proposals for the addition of telecommunications facilities to existing towers, or alternative structures, shall seek building permit approval from the Code Enforcement Officer upon satisfactory completion of the requirements of this section.

- B. Height. No part of the telecommunications facility shall be more than ten (10) feet above the height of the existing structure to which it is attached and in no case shall it exceed the maximum height for the applicable zoning district. For telecommunications facilities co-locating on existing telecommunications towers, standards in section 202.31.O shall apply.
- C. Aesthetics. Unless otherwise required by the FAA, FCC, or other Federal or State authority, telecommunications facilities shall be placed and designed in such a way as to minimize visual impact from public rights of way and abutting residential uses. Telecommunications facilities may not be ground mounted. Telecommunications facilities may be flush mounted to an exterior building wall or located on top of buildings and must be set back from the roof line at least the height of the telecommunications facility.
- D. Structural. To ensure the structural integrity of telecommunications facilities, they shall be designed, constructed, and maintained in conformance with applicable Federal, State, and Local building, electrical and safety codes and designed and installed in accordance with the current standards of the Electronic Industries Association (EIA) *Structural Standards for Steel Antenna Towers and Antenna Supporting Structures*.
- E. Exemptions. The following are exempt from the provisions of this section:
 - 1) Emergency Wireless Telecommunications Antennas solely for emergency communications by public officials.
 - 2) Antennas on property owned, leased or otherwise controlled by the City of Westbrook for the sole purpose of municipal use.
 - 3) Amateur ham radio stations licensed by the Federal Communications Commission.

(Ord. of 3-3-14)

202.31 Telecommunications Tower. Telecommunications towers shall meet the following requirements:

- A. General Review Requirements. All proposals for the construction and expansion of telecommunications towers shall first receive Site Plan approval. In addition to the standards of Site Plan review, all such proposals shall be in conformance with this Ordinance. Proposals for co-location of a telecommunications facility on an existing telecommunications tower which do not result in the expansion of existing towers, shall receive approval from the Code Enforcement Officer under the Special Provisions for Telecommunications Facilities.
- B. Design for co-location. Telecommunications towers and related equipment shall be designed and constructed to accommodate future co-location of at least two (2) additional telecommunications antennas or providers.
- C. Height. Notwithstanding any other height limits established by this Ordinance, the following height limitations are applicable to telecommunications towers. No

telecommunications tower shall exceed two hundred twenty-five (225') feet in height, measured from the tower base to the highest point of the tower and any attached receiving or transmitting device. Towers may not exceed one hundred (100') if located within five hundred (500') feet of a dwelling unit.

- D. Setbacks. The tower shall maintain a minimum setback distance between abutting properties and the base of the tower equal to one hundred twenty (120%) percent of the tower's total height, including any attached transmitting or receiving devices, unless the applicant can demonstrate that the design of the tower will insure that in a collapse, the tower will drop vertically into the ground. In no case, shall the minimum setback distance from the property line to the base of the tower be lesser than one hundred (100%) percent of the tower's total height, including any attached transmitting or receiving devices. Accessory structures and guy wire anchors shall meet the minimum setback of the zoning district in which the tower is located. Any tower shall be setback from other on and off-site towers and supporting structures so that one tower will not strike another in case of collapse.
- E. Structural. To ensure the structural integrity of towers, the owner shall ensure that the construction of a new tower or any alteration of a tower, including the addition of antennas or other attachment, is designed, constructed, and maintained in conformance with applicable Federal, State, and Local building, electrical and safety codes and designed and installed in accordance with the current standards of the Electronic Industries Association (EIA) *Structural Standards for Steel Antenna Towers and Antenna Supporting Structures*.
- F. Aesthetics. Unless otherwise required by the FAA, FCC, or other Federal or State authority, telecommunications towers shall have a galvanized finish.
- G. Lighting. Towers shall not be artificially lighted, unless required by the FAA, FCC, or other Federal or State authority. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding properties and views. Light from artificial sources shall be focused down and may not trespass beyond the lot lines.
- H. Advertising. No advertising or signage is permitted on telecommunications towers, except for safety or other signage required by the FCC.
- I. Fencing. A security fence or wall not less than eight (8) feet in height from the finished grade shall be provided around the tower. Access to the tower shall be through a locked gate.
- J. Landscaping and Buffering. All existing on-site vegetation shall be preserved to the maximum extent practicable. Evergreen trees shall be maintained where a tower exceeds one hundred (100') feet in height. Landscaping shall be added so as to minimize views from public ways and abutting dwelling units.
- K. Vehicle Access. Circulation and vehicle access shall be provided. Road access shall be the minimum size necessary to allow safe access.

- L. Parking. Two (2) parking spaces and one (1) additional space for each tower on-site personnel shall be provided.
- M. Technical Assistance. The Planning Board may obtain or require the applicant to obtain the services of Professional Engineers registered in the State of Maine and other consultants to review and inspect the applicant's proposal, or any portion thereof. Such services are permitted to include, but not be limited to, engineering and technical review, planning review, environmental assessment review, soils review, mechanical and structural engineering review, and the investigation of possible alternative tower systems, designs and/or locations. The costs of said services shall be borne by the applicant.
- N. Approvals and Permits. Where FAA, FCC, or other agency approval is necessary for siting, all documentation shall be made a part of the application.
- O. Existing Towers. All telecommunications towers legally existing at the effective date of this ordinance shall be considered legal non-conforming uses and will be allowed to continue their usage as they presently exist. Notwithstanding the provisions of section 203.6, existing towers may exceed their current height by up to twenty-five (25%), provided that any modifications shall comply with this Ordinance. In no case shall the tower's modified height exceed two hundred twenty-five (225') feet.
- P. Performance Guarantee. A performance bond, or other acceptable form of guarantee, approved by the City Planner as to form and sufficiency, to pay for the costs of removing the entire facility, if it is abandoned, and reclaiming the site to a pre-construction condition, shall be provided. For purposes of this section, a tower shall be deemed abandoned when there are not telecommunications facilities in operation on the tower for a period of greater than 90 days, unless an extension is granted by the Code Enforcement Officer due to damage to the structure by fire, weather or other similar cause. The amount of this performance guarantee shall be in an amount equal to one hundred twenty-five percent (125%) of the projected total cost of removing the entire facility, and reclaiming the site to its pre-construction condition. Should the operation of the facility cease in the future, and the facility is dismantled and the site reclaimed by the owner and/or operator, the performance guarantee shall be returned to the owner and/or operator. The accepted form of surety shall be reviewed by the City Planner every five (5) years, and renewed or increased when necessary.
- Q. Discontinuance of Use. In the event that the use of a telecommunications tower is discontinued, the telecommunications tower owner shall provide written notice to the City of its intent to discontinue use and the date when the use shall be discontinued and a plan, including timeline, for its reuse or reclamation.

(Ord. of 3-3-14)

- 202.32 **When Base Site Area is Calculated Using More Than One Lot.** Base site area may be calculated using more than one lot, provided:
- A. The lots are not contiguous, but are separated by a public or private right-of-way only.
 - B. A plan showing the lots, and a deed describing them, are recorded in the Registry of Deeds.
 - C. Restrictions are placed on the plan noting how the lots were used in calculating the base site area. The restrictions will not allow the lots future use in establishing the base site area.
- 202.33 **Zoning Map Requirements.** A measurement originating, or terminating, at a right-of-way on the zoning map originates or terminates at the center of the traveled portion of the right-of-way.

203 Nonconforming Use Provisions.

203.1 **Continuance.** The legally-existing nonconforming use of land, building or structure existing on the effective date of this ordinance may be continued, although such use does not conform to this ordinance.

203.2 **Discontinuance.** If the nonconforming use of land, building or structure is voluntarily discontinued for 12 consecutive months, as determined by the Code Enforcement Officer, it may thereafter be used or developed only as a permitted use or special exception, in accordance with the performance standards in the zoning district in which it is located.

203.3 **Change of Use.** A nonconforming use may be changed to another nonconforming use if:

- A. The Code Enforcement Officer determines that the proposed use is less intrusive than the current use, or
- B. If the proposed use is determined to be more intrusive than the existing use, the applicant must receive approval from the Zoning Board of Appeals.

If a nonconforming use is changed to a use permitted by this Ordinance, it must remain a conforming use.

203.4 *Reserved.* (Ord. of 11-17-14)

203.5 **Expansion of a Nonconforming Use Within a Building.**

A nonconforming use may be extended, altered or enlarged within a building without a variance under the following conditions:

- A. The building or structure must conform to the performance standards of the zoning district in which it is located.
- B. Any increase in building footprint must not result in coverage that exceeds either the maximum footprint factor or the maximum gross density factor.
- C. No part of the expansion of the building or structure shall encroach, extend or project into any yard space distance required by this ordinance, except where noted in this ordinance.
- D. The expansion or creation of an accessory use to a nonconforming residential building or structure shall be covered by the requirements of this section.

203.6 **Expansion outside of a building.**

Except as otherwise provided in Section 203.5, a nonconforming use may not be altered, extended, or enlarged in any manner or for any purpose.

Where the nonconforming use is an extractive industry, it shall be considered a prohibited extension or enlargement of the use to do any of the following:

- A. Increase the amount of materials lawfully extracted from the site on a monthly basis. This increase shall be determined based upon an average of the amount of

materials lawfully extracted on a monthly basis during the operating months of the extractive industry over the immediate prior (5) years.

- B. Move lawfully existing processing operations to another location on the property.
- C. Increase the amount of truck traffic generated on a daily basis. The increase shall be determined based upon an average of the number of truck trips generated on a daily basis during the operating months of the extractive industry over the immediate prior five (5) years.
- D. Establish any type of extractive industry use on adjacent property that was not part of the parcel on which excavation occurred on the date of the adoption of the ordinance, ordinance amendment or map amendment that made the extractive industry a nonconforming use.
- E. Relocate to another location on the site extraction activities in lawful existence at the time of the adoption of the ordinance, ordinance amendment or map amendment that made the use nonconforming unless the operator of the extractive industry demonstrates to the Code Enforcement Officer the following:
 - 1. The area proposed for extraction activities was clearly intended to be excavated before the adoption of the ordinance, ordinance amendment or map amendment that made the use nonconforming, as measured by objective manifestations and not by subjective intent; and
 - 2. The relocated operations will not have a substantially different and adverse impact on the adjacent neighborhood, including but not limited to traffic generation, dust, noise and vibrations.

For purposes of this section evidence of objective manifestations of intent to excavate an area may include, but is not limited to, Planning Board approval of a plan for an extractive industry for the site, including the area where the relocation is proposed, regardless of whether extraction has commenced in that area before the adoption of the ordinance, ordinance amendment or map amendment that made the extractive industry a nonconforming use.

203.7 Non-conformance in the Shoreland Zone

A. Non-conforming Structures

- (1) Expansions. A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs (a) and (b) below.
 - (a) After January 1, 1989 if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure shall not be expanded, as measured in the floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the

requirements of subsection A(3) of this Section and is less than the required setback from a waterbody, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.

- (b) Whenever a new, enlarged or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board or its designee, basing its decision on the criteria specified in subsection 2 Relocation, below. If the completed foundation does not extend beyond the exterior dimensions of the structure except for expansion in conformity with Subsection A(1) of this Section; and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.
- (2) Relocation. A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State Law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

- (a) Trees removed in order to relocate a structure must be replanted, with at least one native tree, three (3) feet in height, for every tree removed. If more than five (5) trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.

Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be reestablished. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

(b) Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees or a combination thereof.

- (3) Reconstruction or Replacement. Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback, it shall not be any larger than the original structure, except as allowed pursuant to Subsection A(1) of this Section, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Subsection A(2) of this Section.

Any non-conforming structure which is located less than the required setback from a water body, tributary stream or wetland and which if removed by 50% or less of the market value or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained from the Code Enforcement Officer within one (1) year of such damage, destruction or removal.

In determining whether the building reconstruction or replacement meets the water setback to the greatest practical extent the Planning Board shall consider in addition to the criteria in Subsection A(2) of this Section, the physical condition and type of foundation present, if any.

- (4) Change of Use to a Non-conforming Structure. The use of a non-conforming structure may not be changed to another use unless the Planning Board after receiving a written application determines that the new use will have no greater adverse impact on the water body, tributary stream or wetland, or on the subject or adjacent properties and resources than the existing use.

In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, flood plain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

B. Non-conforming Uses

- (1) Expansions. Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 203.4A(1)(a), above.
- (2) Resumption Prohibited. A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.
- (3) Change of Use. An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 203.4A(4), above.

C. Non-conforming Lots

- (1) Non-conforming Lots. A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot area, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.
- (2) Contiguous Built Lots. If two or more contiguous lots or parcels are in a single or joint ownership of record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law (12 M.R.S.A. § 4807-A through 4807-D) and the State of Maine Subsurface Wastewater Disposal Rules are complied with.

If two or more principal uses or structures existed on a single lot of record on the effective date of this Ordinance, each may be sold on a separate lot provided that the above referenced law and rules are complied with. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance.

- (3) Contiguous Lots- Vacant or Partially Built. If two or more contiguous lots or parcels are in single or joint ownership of record at the time of, or since, adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall be combined to the extent necessary to meet the dimensional requirements.

This provision shall not apply to 2 or more contiguous lots, at least one of which is non-conforming, owned by the same person or persons on the effective date of this Ordinance and recorded in the registry of deeds if the lots is served by a

public sewer or can accommodate a subsurface sewage disposal system in conformance with the State of Maine Subsurface Wastewater Disposal Rules; and

- (a) Each lot contains at least 100 feet of shore frontage and at least 20,000 S.F. of lot area; or
- (b) Any lots that do not meet the frontage and lot size requirements of Subsection C(3)(a) of this Section, are reconfigured or combined so that each new lot contains at least 100 feet of shore frontage and 20,000 S.F. of lot area.

(Ord. of 03-07-05; Ord. of 11-24-08; 6-1-09; 11-17-14)

203.8 Provision for Substandard Lots.

- A. Except in the Shoreland Zone, where a substandard lot of record was part of a subdivision approved in conformance with City and State subdivision regulations and statutes, said lot may be constructed upon in accordance with the zoning requirements in effect at the time the lot was lawfully established, provided the proposed use is a permitted one. However, such zoning requirements shall apply only to new construction upon a vacant lot. (Ord. of 03-07-05)
- B. For any substandard lot of record lawfully established prior to the existence of subdivision review or where a subdivision review was not required in accordance with appropriate laws, and where the lot area or frontage, or both, is less than the minimum standard of this ordinance, said lot may be used as permitted in the zoning district in which it is situated, provided the minimum land setback requirements are complied with.
- C. Where a substandard lot cannot meet the yard setback requirements of this ordinance, the Zoning Board of Appeals may grant a variance in accordance with provisions of Chapter 7. No variance shall be granted if the lot is by deed connected to an adjacent lot, and their combination meets the requirements of the ordinance.

(Ord. of 11-17-14)

203.8.1 Design Standards

The following design standards must be used when new construction is proposed for a lot as established in Sections 203.7A and 203.7B above. The purpose of these standards is to ensure that increased density in established neighborhoods makes a positive contribution to the character of the City's urban neighborhoods, while continuing to provide housing for all members of the community. Architectural similarity, not sameness, together with similarity in scale and massing are the key focii of these standards.

- A. The measurement of the immediate neighborhood is as follows:
 - a) On the same side of the street, by counting six houses to the left, and six houses to the right of the proposed building, and

- b) On the opposite side of the street, by counting the house most directly opposite the proposed building, and then counting six houses to the right and six houses to the left.

B. Building Construction Material - Buildings must be constructed on a foundation and framed on the site, unless the building meets the State modular home guidelines.

C. Building Design:

- (1) Porches - There must be a porch at all main entrances that face the street or private way. In the case of corner lots, the main entrance that faces the most traveled way shall be used. New homes are required to have a porch if either of the following situations exists: a) if an existing home on either side of the building lot has a porch, or b) 50% or more of the homes in the immediate neighborhood of the proposed building have porches.

- (a) Single Story Buildings – The porch or deck of a single story building is not required to have a roof but must be at least three (3) feet wide and (3) feet deep.

- (b) Two- or more Story Buildings - If the porch projects out from the building it must have a roof. If the roof of a required porch is developed as a deck or balcony it may be flat, otherwise the roof must have a similar pitch to the main building. If the main entrance is to a single dwelling, the covered area provided by the porch must be designed in a similar style and dimension to an existing porch in the immediate neighborhood. The style chosen shall be approved by the Code Enforcement Officer. If the main entrance is to more than one dwelling unit, the covered area provided by the porch(s) must at least cover the main entrances to the building and be designed in a similar style and dimension to an existing porch in the immediate neighborhood. The style chosen shall be approved by the Code Enforcement Officer.

In all cases, if no applicable porch designs are available in the immediate neighborhood, the Code Enforcement Officer may approve an alternate design that best matches the roof slopes and design of the proposed building.

- (c) Columns – If the front porch at a main entrance provides columns as supports, the columns may not be unadorned 4x4 posts or wrought iron.

- (d) The following additional standard shall apply to such lots in the RGA-1 Zoning District:

- (i) Height. Building height shall no exceed the average height of houses in the immediate neighborhood in existence prior to the proposed subdivision or individual home.
- (ii) Yard Setbacks. Front and rear yard setbacks shall be no less than 15’.

- 2) Windows and Doors – Street facing windows must be vertical. Where abutting properties have sash that are divided, then new buildings shall have

complimentary window designs. Windows in rooms with a finished floor height four (4) feet or more below grade are exempt from this standard.

(3) Roofs

(a) Pitch – Primary structures must have a sloped roof with a pitch that is similar to abutting properties. The use of flat roofs must use the following:

(i) The cornice meets the following conditions:

(a) There must be two parts to the cornice. The top part of the cornice must project at least 6 inches from the face of the building and be at least 2 inches further from the face of the building than the bottom part of the cornice; and

(b) The height of the cornice is based on the height of the building as follows: buildings 10 feet tall or less must have a cornice at least 6 inches high.

(c) Buildings greater than 10 feet and less than 35 feet in height must have a cornice at least 12 inches high.

(b) Eaves – Roof eaves must project from the building wall at least 12 inches on all elevations. Buildings that take advantage of the cornice option are exempt from this standard.

(4).Landscaping – Landscaping must be provided as follows:

(a) At least one tree, of a 2-inch minimum caliper, must be provided in front of each residential structure. On corner lots, there must be one tree for each 50 feet of frontage on the side street. Such tree(s) shall be guaranteed by the landowner for a minimum of 1-year.

(b) Screening shall be provided in the non-driveway side yard in order to provide a buffer to the adjacent lot. The Code Enforcement Officer shall determine that such screening meets the intent of this requirement.

(5). Vehicle Areas –

(a) Parking areas and driveways must be located to the side of the primary structure's street-facing façade.

(b) Attached garages must be set back at least 4 feet further from the property's front lot line than the primary structure's street facing façade is set back from the property's front lot line.

(Ord. of 03-07-05; 11-24-08; 11-17-14)

204 Special Exception.

204.1 Granting a Special Exception. The Planning Board may grant a special exception to this Ordinance and allow the uses in the districts so designated. Where the Home Day Care Provider, Day Care Center or Child Care Center use is proposed and where that use requires approval of a special exception, the requirements of Section 202.9, Home Day Care Provider, Day Care Center and Child Care Center Review, shall supersede all requirements below, except those of 204.8 Notice of Special Exception Application. An applicant who seeks a use by special exception shall submit to the Board diagrams or photographs, which become part of the record, illustrating the proof required by this section. He/She must prove the following:

- A. Certain Requirements Met. That the use requested meets the dimension, parking, loading, and sign requirements of this Ordinance. Otherwise, the applicant must also request an appropriate variance.
- B. Value. That the use requested will not significantly devalue abutting property or property across public or private way. In making its determination, the Board shall take into consideration the type of structure proposed, the topography of the area, the market value of the surrounding real estate, the availability of utilities, traffic conditions, and other relevant factors.
- C. Effects of Land Use. That the use granted will:
 - (1) Maintain safe and healthful conditions,
 - (2) Not cause water pollution, erosion, or sedimentation
 - (3) Not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat,
 - (4) Conserve shared tree cover and visual, as well as actual, access to water bodies,
 - (5) Not burden on-site septic or off-site waste disposal,
 - (6) Not burden existing public ways.
- D. Performance Standards. That the use granted is compatible with adjacent land uses and that it meets the following performance standards:
 - (1) Landscape Environment and Enhancement. The landscape must be preserved in its natural state insofar as practicable. It must be designed so as to stabilize the slopes and buffer the site, where necessary,
 - (2) Surface Water Drainage. Surface water drainage must not have an adverse effect on surrounding properties, downstream water quality, soil stability, or the storm drainage system,
 - (3) Water, Air, Soil Pollution. The development will not cause unreasonable water, air, or soil pollution,
 - (4) Soil Integrity. The development will not cause unreasonable soil erosion or reduction in the capacity of the soil to hold water,

- (5) Natural Environment. The development must not have an unreasonably adverse effect on a historic site or irreplaceable natural areas,
- (6) Nuisance Factor. The development must not cause unreasonable noise, odors, dust, gas, fumes, smoke, light or other annoying or dangerous emissions,
- (7) Special Features. Exposed storage areas, machinery installation, service and loading areas, and similar facilities must be set back, screened, or buffered so as to minimize any possible adverse effect on the surrounding uses,
- (8) Vehicular Access. The site layout must provide for safe vehicular access and egress, including that for emergency vehicles,
- (9) Parking and Circulation. The layout of vehicular and pedestrian traffic patterns must provide for safe interior circulation, separation of pedestrian and vehicular traffic, and storage of plowed snow and the parking shall comply with the parking requirements set forth in Section 505.1 A-D, regardless of whether the special exception requires site plan review, and
- (10) Public Services. The development must not impose an unreasonable burden on the water supply and sewage disposal systems, fire or police services, public ways, schools, recreational facilities, and other public services or facilities.

The applicant must present detailed information in the form of diagrams, photographs and drawings and such engineering data as deemed necessary by the Board. If the Board finds that the applicant can construct the building in such a manner as to not endanger the health or safety of the occupants, it shall grant him a building permit, subject to such condition as it deems necessary.

(Ord. of 4-5-10)

204.2 Special Conditions. In granting an exception, the Planning Board may impose special conditions consistent with the purposes of this Ordinance and with the Comprehensive Plan, with which the applicant must comply. The conditions shall be stated specifically in a copy of the decision and the copy shall be mailed to the applicant. The applicant may appeal the imposed conditions to the Superior Court as provided by statute. If the imposed conditions are temporary, they shall expire automatically on the date set by the Planning Board. If permanent, they must be stated on the certificate of approval over the signature of the Code Enforcement Officer and be recorded in the Registry of Deeds.

- A. **Suspense File.** The Code Enforcement Officer shall maintain a suspense file containing records of all conditions granted by the Planning Board. He/She shall review each extension annually, and shall make an on-site inspection to see whether the condition is being observed.
- B. **Violation.** If the Code Enforcement Officer finds that any condition is being violated, he/she shall make a record of the violation and follow the violation procedure set forth in Section 802 of this Ordinance.

204.3 Time Limitations of Rights Granted by the Planning Board.

A special exception granted by the Planning Board expires unless the work necessary to accomplish the purpose for which it was requested is commenced within one (1) year and completed within two (2) years after it was granted, or is completed in accordance with a phased completion schedule proposed by the applicant and approved, or modified and approved, by the Board and incorporated in its decision granting the exception. In determining whether work has been completed in accordance with an approved schedule, allowances may be made for delays in scheduled completions caused by inclement weather, strike, or acts of a natural nature.

204.4 Limitation on Subsequent Appeals.

If the Planning Board denies a special exception application with respect to certain building or premises, a second appeal of a similar nature may not be brought to the Board within six (6) months.

204.5 Appeal to Superior Court.

A person aggrieved by a decision of the Planning Board concerning the denial of a special exception may appeal to the Superior Court. The appeal shall be taken within thirty (30) days after the decision under the Maine Rules of Civil Procedure, Rule 80B. (Ord. of 11-17-14)

204.6 Recording.

If the Planning Board grants a special exception under this section, then a certificate must be written that indicates the name of the current owner of the property by reference to the last recorded deed in its chain of title, and that a special exception has been granted and the date of that action. Any conditions that were granted as part of the approval shall also be listed. The applicant must record this certificate with the Registry of Deeds within ninety (90) days from the final written approval date on the certificate, or the special exception is void.

204.7 Notice of Special Exception Application.

Notice of Special Exception applications shall be mailed to property owners within 500 feet of the property submitted for special exception. (Ord. of 5-19-08)

Chapter III – Zoning Districts

301 City Center District.

The purpose of the City Center Zoning District is to create a flexible atmosphere for the return of the downtown to a prominent regional service center. Flexible setbacks will be balanced with an overlay of design standards to encourage new development that will be consistent with the goals established in the City's Comprehensive Plan, Downtown Revitalization Plan, Downtown Parking Plan, Downtown Streetscape Plan and Westbrook Riverfront Master Plan. (Ord. of 4-5-10)

301.1 Permitted Uses. The following uses are permitted in the City Center District as a matter of right:

| | |
|-----------------------------------|--|
| Accessory Use | Hotel or Motel |
| Bank Class 2 | Library or Museum |
| Bed and Breakfast Class 1 & 2 | Media Studio Class 2 |
| Business Office | Municipal Facility |
| Child Care Center | Medical Offices (3-7-05) |
| Club or Lodge | Neighborhood Grocery |
| Congregate Care Facility (4-5-10) | Parking Facility |
| Day Care Center | Private Indoor Recreation Facility |
| Dwelling, Single-Family | Restaurant Class 2 |
| Dwelling, Two-Family | Retail Class 1 & 3 |
| Dwelling, Multiple-Family | Service Business |
| Educational/Vocational (6-6-05) | Telecommunications Facilities (3-3-14) |
| Food Cart Vendors | |
| Greenhouse or Florist | |
| Home Occupation | |

301.2 Special Exception. The following uses are permitted in the City Center District as a special exception under Section 204:

Bank Class 1
Church
Community Center
Home Day Care Provider
Light Manufacturing and Research and Development
Theater

Notwithstanding the requirements of Section 204.1.D(9), special exception uses other than home day care providers shall not be required to provide off-street parking.

301.3 Performance Standards. The following performance standards apply in the City Center District:

| | |
|---------------------|------|
| A Minimum Lot Size: | None |
|---------------------|------|

B. Dimension Requirements:

- (1) There are no dimension requirements for yard depths,
- (2) Maximum height is negotiable during site plan review and is restricted to existing scales and safety capacity.

C. Maximum Footprint Factor: 100%

D. Maximum Gross Density Factor: 100%

E. Landscaping Factor: Where a change or expansion of an existing use is proposed, a landscape factor is required if the existing maximum gross density factor is 80% or greater. The landscape factor in these cases is the difference between the existing maximum gross density factor and 100%.

F. Residential Density Factor: 1 dwelling unit per 2500 S.F. of base site area.
(However, minimum size of a residential unit shall be 500 S.F.,
and an additional 150 S.F. per each additional bedroom.)

G. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so no direct lighting is emitted beyond lot lines.

H. Noise. Noise levels must not exceed existing levels at the exterior limits of the property.

I. Vibrations. Vibrations must not exceed existing levels at the exterior limits of the building.

J. Odors. Odors must not exceed existing levels at the lot lines.

K. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operation level of service and pedestrian safety along the lot frontage and at the nearest intersection in both directions. (Ord. of 11-17-14)

L. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view.

M. Parking Requirements. The parking requirements of Chapter V are only applicable to the following uses in the City Center District: Home Day Care Provider, Day Care Center, Child Care Center, Dwelling, Single-Family, Two-Family and Multiple-Family. (Ord. of 4-5-10)

301.4 **Telecommunications Facilities.** For provisions concerning telecommunications facilities, see Section 202.30. (Ord. of 3-3-14)

302 Residential Growth Area 1.

The purpose of the Residential Growth Area 1 zone is to provide urban core community densities to support the downtown center. Reduced setbacks will permit the infill of vacant properties in areas that are already served by municipal infrastructure.

302.1 **Permitted Uses.** The following uses are permitted in the Residential Growth Area 1 as a matter of right:

| | |
|--------------------------|-----------------------|
| Accessory Uses | Funeral Home |
| Bed & Breakfast Class 2 | Greenhouse or Florist |
| Congregate Care Facility | Home Occupation |
| Dwelling, Single-Family | Library/Museum |
| Dwelling, Two-Family | Municipal Facility |
| | Neighborhood Grocery |

302.2 **Special Exception.** The following uses are permitted in the Residential Growth Area 1 as a special exception under Section 204:

Bed and Breakfast Class 1
Day Care Center
Adult Day Care
Dwelling, Multiple-Family
Medical Office
Hospital
Home Day Care Provider
Church
Community Center

302.3 **Performance Standards.** The following performance standards apply in Residential Growth Area 1:

A. Minimum Lot Size: 5,000 S.F. existing; 7,500 S.F. new

B. Dimension Requirements:

(1) Minimum Lot Frontage: 50' existing, 65' new

(2) Yard Setbacks:

| | |
|-----------|-----------------------|
| (a) Front | 15' |
| (b) Rear | 15' |
| (c) Side | 10' existing, 15' new |

(3) Maximum Height: 40'

(Ord. of 03-07-05)

- C. Maximum Footprint Factor: 40%
- D. Maximum Gross Density Factor: 70%
- E. Landscaping Factor: 30%
- F. Residential Density Factor: 1 dwelling unit per 5000 S.F.
- G. Lighting. All outdoor lighting must be of cutoff luminaire variety and must be installed so that no direct lighting is emitted beyond lot lines.
- H. Noise. Noise levels must not exceed existing levels at the exterior limits of the building.
- I. Vibrations. Vibrations must not exceed existing levels at the exterior limits of the building.
- J. Odors. Odors must not exceed existing levels at the lot lines.
- K. Screening. A plan for parking and screening is required for uses other than dwellings, single and two-family. Screening may include, but is not limited to, fencing or plantings.
- L. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operations levels of service and pedestrian safety along the lot frontage and at the nearest intersection in both directions. (Ord. of 11-17-14)
- M. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view.

303 Residential Growth Area 2.

The purpose of the Residential Growth Area 2 is to develop suburban neighborhoods in areas that can be easily served by municipal infrastructure. This zone is a mixture of older subdivisions and vacant land that would best be served with interconnected road systems. Development, through density incentives, is encouraged to bring water and sewer to sites.

303.1 Permitted Uses. The following uses are permitted in the Residential Growth Area 2:

| | |
|--------------------------|-----------------------|
| Accessory Use | Cemetery |
| Bed and Breakfast | Greenhouse or Florist |
| Congregate Care Facility | Home Occupation |
| Dwelling, Single-Family | Nursing Home |
| Dwelling, Two-Family | Adult Day Care Center |
| | Municipal Facility |
| | Farm |

303.2 Special Exception. The following uses are permitted in the Residential Growth Area 2 as a special exception under Section 204:

Neighborhood Grocery
Dwelling, Multiple-Family
Medical Office
Hospital
Day Care Center
Home Day Care Provider
Church
Community Center

303.3 Performance Standards. The following performance standards apply in the Residential Growth Area 2:

| | |
|----------------------|------------------------------------|
| A. Minimum Lot Size: | 10,000 S.F. with sewer |
| | 20,000 - 40,000 S.F. without sewer |

(1) Lot size for non-sewered subdivisions with lot sizes less than 40,000 S.F.: In order to reduce the potential impacts of phosphorus and nitrate groundwater pollution from untreated communal septic system effluent and septic system failure, the determination of lot sizes will be based on the following:

- (a) Hydrological impact analysis: The applicant shall demonstrate the nitrate and phosphorus carrying capacity of the property through the completion of a high-intensity soil survey and subsurface waste water disposal system exploration study. Specific information must be included that quantifies the levels of nitrates and phosphorus that leave the site. A Certified Soil Scientist licensed in the State of Maine shall complete this work.
- (b) Communal Septic Systems: It is recommended that unsewered lots less than 40,000 S.F. in size be on a communal septic system, or any similar system

that enables the project to be connected to sewer lines, if and when they are extended to the property.

B. Dimension Requirements:

- (1) Minimum Lot Frontage: 75' for 10,000 S.F. lots
100' for 20,000 - 40,000 S.F. lots
- (2) Yard Setbacks:
 - (a) Front 10' existing, 15' new
 - (b) Rear 10' existing, 15' new
 - (c) Side 10' existing, 15' new
 - (d) The Code Enforcement Officer may reduce the setback requirements for existing structures to that of the average of adjacent properties, provided that no additional dwelling units are added.
- (3) Maximum Height: 35', and limited to 2 and one-half stories
- C. Maximum Footprint Factor: 30%
- D. Maximum Gross Density Factor: 40%
- E. Landscaping Factor: 60%
- F. Residential Density Factor: 1 dwelling unit per 10,000 S.F. with sewer
1 dwelling unit per 20,000 S.F. - 40,000 S.F. without sewer
 - (1) Residential Density Factor for non-sewered subdivisions with a density greater than 1 unit per 40,000 S.F.: In order to reduce the potential impacts of phosphorus and nitrate groundwater pollution from untreated communal septic system effluent and septic system failure, the determination of lot sizes will be based on the following:
 - (a) Hydrological impact analysis: The applicant shall demonstrate the nitrate and phosphorus carrying capacity of the property through the completion of a high-intensity soil survey and subsurface waste water disposal system exploration study. Specific information must be included that quantifies the levels of nitrates and phosphorus that leave the site. A Certified Soil Scientist licensed in the State of Maine shall complete this work.
 - (b) Communal Septic Systems: It is recommended that unsewered projects developed at less than 40,000 S.F. in size be on a communal septic system, or any similar system that enables the project to be connected to sewer lines, if and when they are extended to the property.
- G. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so that no direct lighting is emitted beyond lot lines.

- H. Noise. Noise levels must not exceed existing levels at the lot lines.
- I. Vibrations. Vibrations must not exceed existing levels at the lot lines.
- J. Odors. Odors must not exceed existing levels at the lot line.
- K. Screening. A plan for parking and screening is required for all uses other than dwellings, single and two-family. Screening may include, but is not limited to, fencing or plantings.
- L. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view.
- M. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operations levels of service and pedestrian safety along the lot frontage and at the nearest intersection in both directions. (Ord. of 11-17-14)

304 Residential Growth Area 3.

The purpose of this more rural zone is to create a similar growth pattern with the Falmouth border. This zone also recognizes that public sewer is not likely to be extended in the near term. While the area is rural in character, there is not an abundance of farm lands. The cluster density incentives are designed preserve more open space, particularly around the Minnow Creek watershed. This zone is also designed to maintain the rural character along Duck Pond Road and Route 302.

304.1 **Permitted Uses.** The following uses are permitted in the Residential Growth Area 3:

| | |
|--------------------------------|-----------------------------|
| Accessory Use | Farm |
| Cemetery | Greenhouse or Florist |
| Dwelling, Single-Family | Home Occupation |
| Dwelling, Manufactured Housing | Municipal Facility |
| Dwelling, Two-Family | Neighborhood Grocery |
| | Private Recreation Facility |

304.2 **Special Exception.** The following uses are permitted in the Residential Growth Area 3 as a special exception under Section 204:

Day Care Center
Adult Day Care Center
Nursing Home
Congregate Care
Home Day Care Provider
Church
Community Center

304.3 **Performance Standards:** The following performance standards apply in the Residential Growth Area 3:

A. Minimum Lot Size: 60,000 S.F. for single lots
20,000 square feet for subdivisions with cluster designs
(Ord. of 03-07-05)

B. Dimension Requirements:
(1) Minimum Lot Frontage: 100'

| | | |
|------------------|-------------|---------|
| (2) Yard Depths: | Traditional | Cluster |
| (a) Front | 30' | 15' |
| (b) Rear | 30' | 15' |
| (c) Side | 20' | 15' |

(Ord. of 03-07-05)

(3) Maximum Height: 35', and limited to 2 and one half stories
(Ord. of 03-07-05)

- C. Maximum Footprint Factor: 15%
25% for Cluster
(Ord. of 03-07-05)
- D. Maximum Gross Density Factor: 25%
40% for Cluster
(Ord. of 03-07-05)
- E. Landscaping Factor: 75%
60% for Cluster
(Ord. of 03-07-05)
- F. Residential Density Factor: 1 Dwelling unit per 60,000 S.F. for single lots
1 dwelling unit per 40,000 S.F. for cluster projects
- G. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so that no lighting is emitted beyond lot lines.
- H. Noise. Noise levels must not exceed existing levels at the exterior limits of the building.
- I. Vibrations. Vibrations must not exceed existing levels at the exterior limits of the building.
- J. Odors. Odors must not exceed existing levels at the exterior lot lines.
- K. Screening. A plan for parking and screening is required for all uses other than dwellings, single and two-family and manufactured housing. Screening may include, but is not limited to, fencing or plantings.
- L. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view.
- M. Farm Buffer. All newly created farms housing livestock, poultry, horses and other farm animals must be kept a minimum of 50 feet from an abutting residential development.
- N. No direct driveway access to Duck Pond or Mast Road shall be permitted for subdivided lots.
- O. All lots created through subdivision review shall maintain a 25-foot buffer between the developed portion of the property and Duck Pond or Mast Road for any new development, preserved through appropriate legal mechanisms. Selective cutting of trees and vegetation within this strip is permitted provided that a well distributed stand of trees and other vegetation is maintained. Clearing of trees and vegetation shall be permitted to provide access to lots for agricultural and timber harvesting

purposes. Unless it can be shown that no other reasonable alternatives exist, this clearing shall be no wider than 250 feet of road frontage.

- P. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operations levels of service and pedestrian safety along the lot frontage and at the nearest intersection in both directions. (Ord. of 11-17-14)

305 Prides Corner Smart Growth Area.

The purpose of this “smart growth” area is to establish a growth pattern that is anti-sprawl in nature. The standards for this zone will be flexible, encouraging a mixture of residential uses, as well as limited commercial and industrial activity. It is the intent of this zone to follow the goals and objectives outlined in “The Great American Neighborhood – Westbrook Route 302 Public Charrette.” The map, scheme A is referenced as part of the zoning map for the purpose of directing the pattern of development.

305.1 Permitted Uses.

| | |
|--------------------------|---|
| Accessory Use | Light Manufacturing |
| Automobile Repair | Medical Offices* |
| Banks Class 1 & 2 | Municipal Facility |
| Business Office | Retail Classes 1, 2 & 3 |
| | (footprint limited to 20,000 square feet) |
| Dwelling, Single-family, | Service Business |
| Dwelling, Two-family, | |
| Dwelling, Multi-family | |
| Home Occupation | |

* Ord. of 03-07-05

305.2 Special Exceptions. The following uses are permitted in the Prides Corner Smart Growth Areas as a special exception, subject to the requirements of Section 204:

Child Care Center
Day Care Center
Home Day Care Provider
Congregate Care Facility
Church
Club or Lodge
Community Center
Theater

305.3 Performance Standards: The following performance standards apply in the Pride’s Corner Smart Growth Area:

A. Minimum Lot Size: 5,000 S.F.
20,000 S.F. without sewer

B. Dimension Requirements:

- (1) Minimum lot frontage: 50’
- (2) Yard Depths:
- (a) Front 10’
 - (b) Rear 10’
 - (c) Side 8’

- (3) Maximum Height: 50'
- C. Maximum footprint factor: 40%
(for entire zone; no restrictions per lot)
- D. Maximum Gross Density Factor: 50%
(for entire zone; no restrictions per lot)
- E. Residential Density Factor: 1 per 15,000 S.F.
(for all areas marked residential)
- F. Landscaping Factor: 50%
(for entire zone, no restrictions per lot)
- G. Lighting: All outdoor lighting must be of the cutoff luminaire variety and must be installed so no direct lighting is emitted beyond lot lines.
- H. Noise. Noise levels must not exceed existing levels at the exterior limits of the building.
- I. Vibrations. Vibrations must not exceed existing levels at the exterior limits of the building.
- J. Odors. Odors must not exceed existing levels at the lot lines.
- K. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operation level of service and pedestrian safety along the lot frontage and at the nearest intersection in both directions. (Ord. of 11-17-14)
- L. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view.
- M. The size of any retail building shall be limited to 20,000 square feet.

306 Rural District.

The purpose of the Rural District is to provide an area of rural quality consistent with the Comprehensive Plan. Standards permit clustering and focus on preserving open space and important vistas. The uses for the rural district are also more consistent with farm and low-density development.

306.1 Permitted Uses. The following uses are permitted in the Rural District as a matter of right:

| | |
|---------------------------|--|
| Accessory Use | Golf Course |
| Bed and Breakfast Class I | Greenhouse or Florist |
| Cemetery | Home Occupation |
| Day Care Center | Municipal Facility |
| Dwelling, Two-family | Telecommunications Facilities (3-3-14) |
| Dwelling, Single-family | Veterinary Clinic |
| Farm | |

306.2 Special Exceptions. The following uses are permitted in the Rural District as a special exception under Section 204:

Adult Daycare
Campgrounds
Church
Home Day Care Provider
Extractive Industry
Neighborhood Grocery (Ord. of 11-17-14)
Telecommunications Tower (Ord. of 3-3-14)

306.3 Performance Standards. The following performance standards apply in the Rural District as a special exception, subject to the requirements of Section 204:

A. Minimum Lot Size: 60,000 S.F.
20,000 Square Feet for subdivisions with cluster designs
(Ord. of 03-07-05)

B. Dimension Requirements:
(1) Minimum Lot Width: 100' for cluster

| | | |
|---------------------------|--------------------|-------------|
| | Cluster | Traditional |
| (1) Minimum Lot Frontage: | 100' | 200' |
| | (Ord. of 03-07-05) | |

| | | |
|------------------|---------|-------------|
| | Cluster | Traditional |
| (2) Yard Depths: | | |
| (a) Front | 15' | 30' |
| (b) Rear | 15' | 30' |

(c) Side

15' 30'
(Ord. of 03-07-05)

- (3) Maximum Height: 45'
- C. Maximum Footprint Factor: 25%
- D. Maximum Gross Density Factor 40%
- E. Residential Density Factor: 1 dwelling unit per 40,000 S.F.
- F. Landscape Factor: 60%
- G. Campgrounds. A campground application must be approved under site plan review and must be approved and licensed by the Maine Department of Human Services.
- H. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so that no direct lighting is emitted beyond lot lines.
- I. Noise. Noise must not exceed existing levels at the lot lines.
- J. Vibrations. Vibrations must not exceed existing levels at the lot lines.
- K. Odors. With the exception of agricultural application and practices, odors must not exceed existing levels beyond their lot lines.
- L. Screening. A plan for parking and screening may be required for all uses other than dwellings, single family, two-family and manufactured housing. Screening may include, but is not limited to, fencing or plantings.
- M. Storage of Materials. All materials shall be stored in an enclosed structure so as to be screened from view.
- N. Vegetative Setbacks for Methodist Road. All lots created through subdivision review shall retain a 25-foot vegetative strip between the developed portion of the property and Methodist Road. Selective cutting of trees and vegetation within this strip is permitted provided that a well distributed stand of trees and other vegetation is maintained. Clearing of trees and vegetation shall be permitted to provide access to lots for agricultural and timber harvesting purposes. Unless it can be shown that no other reasonable alternatives exist, this clearing shall be no wider than 250 feet of road frontage.
- O. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operations levels of service and pedestrian safety along the lot frontage and at the nearest intersection in both directions. (Ord. of 11-17-14)

306.4 **Telecommunications Facilities and Towers.** For provisions concerning telecommunications facilities, see Section 202.30. For provisions concerning telecommunications towers, see Section 202.31. (Ord. of 3-3-14)

307 Highway Services District.

The Highway Services district is comprised of the small commercial/retail areas located in the following areas: Methodist and Duck Pond Road neighborhood; Pride's Corner Center; Spring Street at the city line; and small individual sites along Pride Street. . The standards are meant to be flexible, but geared to improve appearance and reduce sprawl in these important mixed-use gateway centers.

307.1 Permitted Uses. The following uses are permitted in the Highway Services District as a matter of right:

| | |
|-----------------------|------------------------------------|
| Accessory Use | Media Studio Class 1 & 2 |
| Business Office | Municipal Facility |
| Car Wash | Neighborhood Grocery |
| Child Care Center | Private Indoor Recreation Facility |
| Day Care Center | Restaurant Classes 1 & 2 |
| Education Facility | Retail Classes 1, 2, 3 |
| Greenhouse or Florist | Service Business |
| Medical Offices* | Veterinary Office or Kennel |
| | *(Ord. of 03-07-05) |

307.2 Special Exceptions. The following uses are permitted in the Highway Services District as a special exception under Section 204:

Industry
Retail Class 4
Church
Club or Lodge

307.3 Performance Standards. The following performance standards apply to the Highway Services District:

| | |
|------------------------------|--------------------|
| A. Minimum Lot Size: | 15,000 S.F. |
| B. Dimension Requirements: | |
| (1) Minimum Lot Frontage: | 100' |
| (2) Yard Depth: | |
| (a) Front | 30' |
| (b) Rear | 30' |
| (c) Side | 30' |
| (3) Maximum Height: | 40', and 3 stories |
| C. Maximum Footprint Factor: | 40% |

- D. Maximum Gross Density Factor: 75%
- E. Landscaping Factor: 25%
- F. Noise. Noise must not exceed existing levels at the lot lines.
- G. Odors. Odors must not exceed existing levels at the lot lines.
- H. Hazardous Matter. The emission of hazardous matter must be so controlled that no concentration is permitted beyond the building limits that would be detrimental to or endanger the public health or cause damage or injury to property. No storage of hazardous matter is permitted, except that used exclusively for ongoing production purposes.
- I. Vibrations. Vibrations must not exceed existing levels at the lot lines.
- J. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so that no direct lighting is emitted beyond zone lines.
- K. Traffic Impact. The traffic pattern from a change or expansion in use must be designed so as to maintain the existing traffic operations levels of service and pedestrian safety within a reasonable determined distance from its point of ingress or egress. In addition, the following applies:
- (1) No point of any ingress or egress may be located within 150' from any recognized intersection or other curb cut,
 - (2) One point of ingress and egress is permitted per lot. All other frontage must be curbed and landscaped so as to prevent its use as a point of ingress or egress,
 - (3) Any point of ingress or egress must be from 12' to 15' in width per lane. Said point shall intersect the main arterial at 90 degrees and shall have a minimum 25' curb radii at the intersection,
 - (4) Driveways shall be shared with neighboring businesses whenever possible to reduce the number of curb cuts.
- L. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view.
- M. Installation of Utilities. All electric, telephone, and similar lines must be placed underground from the street connection to the building, where possible. In the case of commercial park developments, the use of underground utilities is also encouraged for streets within the development.

(Ord. of 11-17-14)

308 Business/Professional Office District.

The Business/Professional Office District consists of approximately 102 acres of land accessible by Exit 7B or the Westbrook Arterial. Because of the proximity of this land to the farmlands and open residential character of the Stroudwater Rural Neighborhood, the City will limit commercial development of these properties to primarily business/professional office and light manufacturing uses. The large acreage require that the area be master-planned, creating a quality campus atmosphere that results in both high-wage employment and a harmonious relationship with surrounding farmland and residential properties. Only limited retail support uses will be permitted.

308.1 **Permitted Uses.** The following uses are permitted in the Business/Professional Office District:

| | |
|-----------------------|---|
| Business Office | Restaurant Class 2 |
| Farm | Retail Class I (restricted to 2,000 S.F.) |
| Industry | Media Studio Class 1 |
| Media Studio Class 2 | Neighborhood Grocery |
| Municipal Facility | Hotel |
| Greenhouse or Florist | Accessory Use |
| Parking Facility | |

308.2 **Special Exception.** There is one special exception in the Business/Professional Office District:

Child Care Center

308.3 **Performance Standards.** The following performance standards apply in the Business/Professional Office District.

| | |
|----------------------------------|----------|
| A. Minimum Lot Size: | 20 ACRES |
| B. Dimension Requirements: | |
| (1) Minimum Lot Frontage | 200' |
| (2) Yard Depths: | |
| (a) Front | 30' |
| (b) Rear | 50' |
| (c) Side | 50' |
| (3) Maximum Height | 50' |
| C. Maximum Footprint Factor: | 40% |
| D. Maximum Gross Density factor: | 60% |

- E. Landscaping factor: 40%
- F. Noise. Except for normal vehicular traffic and emergency warning systems, noise must not exceed existing levels at the zone lines.
- G. Odors. Odors must not exceed existing levels at the zone lines.
- H. Vibrations. Vibrations must not exceed existing levels of the zone lines.
- I. Hazardous Matter. The emission of hazardous matter must be so controlled that no concentration is permitted beyond the building limits that would be detrimental to or endanger the public health or cause damage or injury to property. No storage of hazardous matter is permitted, except that used exclusively for ongoing production purposes.
- J. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so that no direct lighting is emitted beyond the lot lines.
- L. Storage of Materials. All materials must be stored within an enclosed area so as to be screened from view.
- M. Installation of Utilities. All electric, telephone, and similar lines must be placed underground.
- N. If the proposed use is part of a planned unit development reviewed under either subdivision or site plan review, the right-of-way on which the development obtains frontage must be at least 100' wide.
- O. Traffic impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operations levels of service and pedestrian safety along the lot frontage and at the nearest intersection in both directions.

(Ord. of 11-17-14)

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309 Gateway Commercial District.

This district is designed to provide for a regional retail center that takes advantage of major transportation linkages. The use of land in this zone is to be maximized, but according to a set of standards as part of the community's gateway planning. The 2012 Comprehensive Plan encourages a mix of uses on consolidated lots and a uniform building line along Main Street. (Ord. of 11-17-14)

309.1 Permitted Uses. The following uses are permitted in the Gateway Commercial District as a matter of right:

| | |
|---------------------------------------|---------------------------------------|
| Accessory Use | Medical Offices (Ord. of 3-7-05) |
| Automobile Dealership (6-23-14) | Municipal Facility |
| Auto Repair Service | |
| Bank Class 2 | Neighborhood Grocery |
| Business Office | Private Recreation Facility |
| Child Care Center | Restaurants Class 2 |
| Day Care Center | Retail Class 1, 3 & 4 |
| Educational Facility (Ord. of 7-1-13) | Service Business |
| Greenhouse or Florist | Telecommunication Facilities (3-3-14) |
| Hotel/Motel | Veterinary Office or Kennel |
| Industry | Vocational Education Facility |
| Media Studio Class 1 & 2 | |

(Ord. of 1-6-14)

309.2 Special Exceptions. The following use is permitted in the Gateway Commercial District as a special exception under Section 204:

Bank Class 1
Dwelling, Multiple Family¹
Church
Restaurant Class 1
Theater

(Ord. of 1-6-14)

309.3 Performance Standards. The following performance standards apply in the Gateway Commercial District:

- A. Minimum Lot Size: 20,000 S.F.
- B. Dimension Requirements:

¹ Note to committee: this was added based on a multi-use transportation corridor study done by PACTS in which having housing in this HUB is both good for those working in retail centers and assists in the development of transit operations.

- | | |
|---------------------------|---------------------------|
| (1) Minimum Lot Frontage: | 100' |
| (2) Yard Depth: | |
| (a) Front | 20' |
| (b) Rear | 20' |
| (c) Side | 20' |
| (3) Maximum Height: | 50' and four stories |
| (4) Maximum Footprint: | 160,000 S.F. ¹ |
- C. Maximum Footprint Factor: 50%
- D. Maximum Gross Density Factor: 75%
- E. Landscape Factor: 25%
- F. Residential Density Factor: 1 dwelling unit per 2,500 S.F.
- G. Noise. Noise must be confined to the existing levels at the walls of the building on the site.
- H. Odors. Odors must be limited to existing levels at the exterior of the building.
- I. Hazardous Matter. The emission of hazardous matter must be so controlled that no concentration is permitted beyond the building limits that would be detrimental to or endanger the public health or cause damage to property. No storage of hazardous matter is permitted, except that used exclusively for ongoing production purposes.
- J. Vibrations. Must not exceed existing levels at the exterior of the building.
- K. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so that no direct lighting is emitted beyond the lot lines.
- L. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view.
- M. Installation of Utilities. All electric, telephone, and similar lines must be placed underground.
- N. Buffer Zones. Where a business or industry abuts a residential use, a 50' buffer zone must be maintained between the building and the lot line of the residential use.
- O. Gateway Standards

¹ Maximum footprint of any single building.

Purpose. In 2000, the cities of Portland and Westbrook worked jointly to develop a gateway plan for the entrances of our communities along the Brighton Avenue corridor. The Brighton Avenue/Main Street Corridor Traffic and Streetscape Study identifies a number of safety and appearance improvements to the corridor, intended to provide a safer and more pleasing experience for the driver and pedestrian as they move through the corridor. This should, over time, increase property values in this corridor, creating an incentive for further investment.

Improvement Standards. When there is new construction (i.e. an addition or new building), or when more than 20% of a property's activity or use changes, the owners are required to submit an application for site plan review, demonstrating how the following performance standards are to be met:

- (1) Landscaping: 25% of the entire site shall be landscaped, leaving 75% for building and paved areas. The landscape plan shall incorporate all plantings within the site such that pavement viewshed is reduced and shaded, storage and loading areas screened, vehicle entry areas decorated/landscaped, and the general harshness of pavement and building reduced.

When it can be satisfactorily demonstrated to the Planning Board that it would be overly burdensome to fulfill this requirement due to site constraints or the unique nature of the use of the property, then the applicant shall pay a fee in lieu of providing the full on-site landscaping requirement. In no event shall an applicant be allowed to eliminate the full landscaping requirement through payment of the fee. The funds must be used in the study area in a manner consistent with the Brighton Avenue/Main Street Corridor Traffic and Streetscape Study, to provide landscaping and other streetscape improvements. The fee in lieu of landscaping is calculated as set forth in the City's Master Fee Schedule, which may be updated from time to time. (Ord. of 10-1-12)

- (2) Pedestrian Movement: The site must provide for a system of pedestrian ways that are protected and safe from vehicular movement. The system must connect the major building entrances/exits with parking areas. The system should connect with existing sidewalks in the area, bus stops, and with any other area amenities.
- (3) Curbing and Esplanades: Curbing and esplanades shall be used to define parking and driveway areas. Curbing may also be used around building entrances and other pedestrian oriented areas such that the pedestrian is clearly separated from the vehicular movement. Granite curbing shall be used at all intersections with a public street and is encouraged for use through the remainder of the project.
- (4) Vehicle Channelization: The layout of any site must provide for the safe movement of passenger, service, and emergency vehicles in an organized and defined fashion.
- (5) Lighting: A lighting plan shall be developed for the site that provides for consistent treatment throughout the site. All lighting shall be of the "cutoff luminaire" style, such that light is shielded and directed down. No light shall spill beyond the property lines. Ornamental light poles and fixtures shall be located along the Main Street frontage.

(6) Signage and Condition: In addition to meeting the sign ordinance requirements, the owner may be required to improve the existing signs when they are in poor condition. Examples of poor condition can include broken lights, broken lens covers, faded paint or colors, or broken connections of sign to building.

(7) Loading and storage areas: All loading and storage areas shall be screened from view from the street and abutters. Screening can include fencing, walls, or vegetation and shall block the loading and storage area from view.

P. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operations levels of service and pedestrian along the lot frontage and at the nearest intersection in both directions.

(Ord. of 11-17-14)

309.4 **Telecommunications Facilities.** No new telecommunications towers are allowed. Co-location of telecommunications facilities is allowed on existing towers, provided that they comply to the provisions in Section 202. For provisions concerning telecommunications facilities, see Section 202.30. For provisions concerning telecommunications towers, see Section 202.31. (Ord. of 3-3-14)

310 Industrial Park District.

The Industrial Park District includes the City's largest developed industrial parks. Some of these existing facilities are in need of upgrade, while others have the capacity to expand. Setback and lot standards have been relaxed to encourage such investment

310.1 Permitted Uses. The following uses are permitted in the Industrial Park District as a matter at right:

| | |
|---------------------------------------|--|
| Accessory Use | Municipal Facility |
| Business Office | Neighborhood Grocery |
| Educational Facility (Ord. of 7-1-13) | Private Indoor Recreation Facility |
| Industry | Telecommunications Facilities (3-3-14) |
| Media Studio Class 1 | Vocational Educational Facility |
| Media Studio Class 2 | |

310.2 Special Exceptions. The following uses are permitted in the Industrial Park District as a special exception under Section 204:

Child Care Center
Extractive Industry
Church
Club or Lodge
Telecommunications Tower
Theater

310.3 Performance Standards. The following performance standards apply in the Industrial Park District:

| | |
|----------------------------------|-------------|
| A. Minimum Lot Size: | 20,000 S.F. |
| B. Dimension Requirements: | |
| (1) Minimum Lot Frontage: | 200' |
| (2) Yard Depths: | |
| (a) Front | 40' |
| (b) Rear | 30' |
| (c) Side | 30' |
| (3) Maximum Height: | None |
| C. Maximum Footprint Factor: | 50% |
| D. Maximum Gross Density Factor: | 80% |
| E. Landscape Factor: | 20% |

- F. Noise. Noise must not exceed existing levels at the zone lines.
- G. Odors. Odors must not exceed existing levels at the zone lines. Wood pulping and similar processes are a prohibited use.
- H. Hazardous Matter. The emission of hazardous matter must be so controlled that no concentration is permitted beyond the building limits that would be detrimental to or endanger the public health or cause damage or injury to property. No storage of hazardous matter is permitted, except that used exclusively for ongoing production purposes.
- I. Vibrations. Vibrations must not exceed existing levels at the lot lines.
- J. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so that no direct lighting is emitted beyond lot lines.
- K. Traffic impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operations levels of service and pedestrian safety along the lot frontage and at the nearest intersection in both directions.

(Ord. of 11-17-14)

310.4 **Telecommunications Facilities and Towers.** For provisions concerning telecommunications facilities, see Section 202.30. For provisions concerning telecommunications towers, see Section 202.31. (Ord. of 3-3-14)

311 Manufacturing District.

This district is located south of the Stroudwater River, north of the electric transmission power line easement, and between Saco Street and Spring Street. Performance standards for uses in this district are designed to maintain compatibility between differing uses. All uses and activities must be conducted within the principal building. Such uses are capable of operating in a manner that controls the external effects of the manufacturing process, such as sound, odors, vibrations, emissions, dust, glare, or other nuisance characteristics, through prevention or mitigation devices, and of conducting operations, within the confines of buildings.

311.1 Permitted Uses. The following uses are permitted in the Manufacturing District as a matter of right, and other similar light manufacturing uses may be included in this district by interpretation of the Code Enforcement Officer or his/her designee:

- 1) Manufacturing uses, including, but not limited to, precision metal and composite manufacturing, bakeries, breweries, bottling, printing and publishing, pharmaceutical, machine shops, musical instruments, media studio class 1 and 2, precision instruments, watchmakers, toys and sporting goods, wood products, jewelry, assembly of electrical components, tool and die shops and the packaging of food.
- 2) Accessory Use. Accessory uses shall be customarily incidental and subordinate to a permitted primary use within this subsection. Accessory uses shall be under the same ownership or control as the permitted primary use. No accessory use shall be established until the primary permitted use is established and operating. If the primary use ceases operations for 12 months then the accessory retail use shall cease operations.
 - (a) Limited Retail Uses. Retail may be allowed as an accessory use if the Code Enforcement Officer determines that the following conditions are met:
 - (i) The retail use would not exceed 15% of the gross floor area of any building. Any storage directly associated with the retail use shall be included in this allowable area.
 - (ii) The proposed retail use would be located within the same building as the allowed primary use to which it is accessory.
- 3) Business Office
- 4) Warehousing
- 5) Commercial Service Business
- 6) Municipal Facility
- 7) Neighborhood Grocery
- 8) Private Indoor Recreation Facility
- 9) Vocational Educational Facility
- 10) Research and Development
- 11) Commercial kitchens or other food preparation provided that the food is not prepared for service on the premises other than as an accessory use.
- 12) Telecommunications Facilities (Ord. of 3-3-14)

311.2 Special Exceptions. The following uses are permitted in the Manufacturing District as a special exception under Section 204:

- (a) Child Care Center
- (b) Church

- (c) Telecommunications Tower (Ord. of 3-3-14)
- (d) Utilities

311.3 **Prohibited Uses.** Those uses that are prohibited shall include, but are not limited to, the following:

- (a) Junk yards
- (b) Retail trade and restaurants not accessory to a permitted use
- (c) Mining and drilling operations
- (d) Extraction and processing of raw materials
- (e) Asphalt plants
- (f) Refining of petroleum or its products, including tar distillation
- (g) Commercial petroleum storage yards

311.4 **Performance Standards.** The following performance standards apply in the Manufacturing District:

- A. Minimum Lot Size: 20,000 S.F.
- B. Dimension Requirements:
 - 1. Minimum Lot Frontage: 200'
 - 2. Yard Depths:
 - A. Front 40'
 - B. Rear 30'
 - C. Side 30'
 - 3. Maximum Height: 75' and up to 5-stories. Maximum height shall include mechanical equipment and architectural detail.
- C. Maximum Footprint Factor: 50%
- D. Maximum Gross Density Factor: 80%
- E. Landscape Factor: 20%
- F. Storage. Outdoor storage must be screened from view of public ways.
- G. Maximum permissible sound levels: The maximum permissible sound level of any continuous, regular, frequent, or other sound typically produced by the use, shall not exceed the following:
 - 1. 70 (70) dBa beyond the walls of the building between the hours of 7:00 am and 10:00 pm.
 - 2. 60 (60) dBa beyond the walls of the building between the hours of 10:00 pm and 7:00 am.
 - 3. Exemptions:
 - A. Noises created by construction and maintenance activities between 7:00 am and 10:00 pm are exempt from the maximum permissible sound levels set forth in this section.

- B. The following uses and activities shall also be exempt from the requirements of this section:
 - i. The noises of safety signals, warning devices, emergency pressure relief valves, and any other emergency devices.
 - ii. Traffic noise on public roads or noise created by airplanes and railroads.
 - iii. Noise created by refuse and solid waste collection, provided that the activity is conducted between 5:00 am and 10:00 pm
 - iv. Emergency construction or repair work by utilities at any hour.
- H. Odors. Odors must not exceed existing levels at the zone lines. Wood pulping and similar processes are a prohibited use. Odors generated by the use must not leave the lot line.
- I. Hazardous Matter: The emission of hazardous matter must be so controlled that no amount generated by the use is permitted beyond the building. Storage of hazardous matter is prohibited, except that used exclusively for ongoing production purposes.
- J. Vibrations: Vibrations inherently and recurrently generated shall be imperceptible with and without instruments beyond the required building setback lines.
- K. Glare: All outdoor lighting must be of the full cut off luminaire variety and the light source must not be visible at the lot line.
- L. Traffic impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operations levels of service and pedestrian safety along the lot frontage and at the nearest intersection in both directions.

(Ord. of 11-17-14)

311.5 Extractive Industry. This section governs extractive industry in the Manufacturing District.

- A. Purpose. The purpose of this Section is to incorporate as part of the City's zoning ordinance the performance and use standards agreed to by the City, Pike, and IDEXX, following the completion of applicable procedures, in accordance with Paragraph 38 of *Pike Industries Inc. v. City of Westbrook*, 2012 ME 78 (June 14, 2012). The performance standards apply to the operation of the 32 acre existing hard rock quarry located at 645 Spring Street (the "Spring Street Quarry") delineated as Tax Map 5, Lot 11 and Tax Map 5B, Lot 3. The existing quarry is located easterly of Clarke Brook. The operations of the Spring Street Quarry include blasting, rock storage, rock crushing and the transport of the product.
- B. Performance and Use Standards. These performance and use standards are meant to control over any different, conflicting, or additional performance and use standards or other limitations contained in the Westbrook Code of Ordinances, including the provisions of Council Order 2010-14 (June 7, 2010) amending non-conforming use standards for extractive industry. The following performance and use standards, and no others, apply to the Spring Street Quarry:

1. Hours of operation.

- Trucking 7:00 am – 5:00 pm weekdays and 7:00 am – 12:00 pm on Saturdays
- Weekdays only for blasting and crushing;
 - Blasting – 10:00 am – 3:00 pm
 - Crushing – 7:00 am – 6:00 pm
 - No operations on Sundays or federal holidays

The Code Enforcement Officer may approve operations outside these hours for emergencies, such as the need to repair a public utility or a public right-of-way as a result of a severe weather event.

2. Blasting. No more than 8 production blasts may be conducted per calendar year. In addition to production blasts, safety blasts limited to no more than one thousand (1000) pounds of explosive materials per blast may be conducted if necessary to maintain the safe operation of the quarry, but not for the purpose of producing rock for crushing or commercial sale. Except in the case of a safety emergency, safety blasts shall be conducted on one or more of the days when production blasts are conducted.
3. Truck Traffic. Trucking may not exceed an average of forty-five (45) daily truck departures and may not exceed a peak limit of one hundred and five (105) truck departures in any single day. The average daily truck departures will be determined by dividing the total number of annual truck departures by the total number of annual operating days, to be reconciled on an annual basis. A “truck departure” is defined as any instance in which a loaded truck, containing material for sale or commercial processing other than a pickup truck or a service vehicle truck leaves the Quarry. An “operating day” is defined as any day quarrying activities occur at the Quarry. For the purposes of calculating the average daily truck departures, the total number of annual operating days is to be calculated as follows: (1) from April 1 through December 1 of any year (the “operating season”), an “operating day” is defined as any day on which quarrying activities occur at the Quarry; (2) Saturdays on which the operator conducts quarrying activities will count as half of one operating day in calculating average daily truck traffic; and (3) outside of the operating season, only those days on which the operator has 10 or more truck departures will count as an operating day for the purposes of calculating the average daily truck departures.
4. Insurance. Maintain a minimum of \$10 million in insurance coverage in aggregate for blasting.
5. Buffers, Berms, and Fencing. Maintain the existing visual buffer between the Quarry and abutting properties and streets or a substantially equivalent visual buffer, as approved by the Code Enforcement Officer; in addition:
- a. maintain a perimeter security fence around the quarry;
 - b. maintain a minimum ten (10) feet high vegetative buffer facing County Road;

- c. maintain the existing twenty (20) feet wide vegetative buffer along the Central Maine Power right-of-way;
 - d. maintain berms with evergreen plantings, slatted fencing, and other approved buffers;
 - e. maintain the approved visual screening of the Quarry operations from all public streets;
 - f. retain to the maximum extent possible the existing natural buffer between Spring Street and the Quarry access road with a minimum width of fifty (50) feet; and
 - g. maintain the twenty-five (25) foot wide berm with evergreen plantings with a minimum height of ten (10) feet on the Quarry side of the Quarry access road. Any revisions to any of these conditions must be reviewed by the Code Enforcement Officer to determine that they are substantially equivalent to the approved conditions.
6. Unitrode Site. Not work the Quarry below the water table except in accordance with the monitoring plan developed by Sevee & Maher Engineers, Inc. and approved in advance by the City Engineer after consultation with the Maine Department of Environmental Protection's Mining Coordinator and Unitrode Project Coordinator.
 7. Blast Monitoring. Use third-party blast planning and monitoring and provide annual reports to the City to document blasting within the preceeding twelve (12) months. Video record all blast activities and maintain such records for a period of one (1) year. These records will be provided upon request to the City.
 8. Seismograph Monitors. Provide off-site seismic monitors to all requesting property owners within ½ mile, to be monitored by a third party, to the extent such monitoring is not duplicative in the judgment of a third party providing such monitoring. Monitoring reports shall be kept for three (3) years and shall be made available to the property owners and the City within ten (10) days of each blast.
 9. Pre-Blast Surveys. Provide one third-party pre-blast survey to each requesting home or business within one-half (½) mile radius of the Quarry. Copies of the surveys shall be kept until blasting at the Quarry has been completed, plus one (1) year.
 10. Weather Conditions. Blast only during weather conditions which are favorable to mitigating off-site impacts, e.g., noise and dust.
 11. Inspection and Repair. Develop, in conjunction with the City, a process through which an independent third party will inspect claims of property damage that are raised by neighboring property owners. If any damage is determined, based on the independent review, to have been proximately caused by blasting, provide reasonable compensation for necessary repairs, as recommended by an independent third party.
 12. Blast Call List. Maintain and use a blast call list for any property owner within one-half (½) mile of the Quarry who requests inclusion on the blast call list. Property owners on the blast call list shall be notified (A) not less than twenty-four (24) hours before any

scheduled production blast and (B) telephoned or emailed, as the property owner has specified, not less than one (1) hour before the actual production blast. In addition, production blasts shall be scheduled not less than two (2) weeks in advance and notice of the blasts shall be provided on the City's web-site. Those property owners who prefer may request their notice to be sent by U.S. mail

13. Access Road and Entrance. Maintain the existing paved access road below the grade of Spring Street and maintain the existing entrance onto Spring Street. Once the Quarry has been in operation for at least six (6) months, the Quarry owner shall meet with the City and neighbors of the Quarry in a public session to discuss the design of additional left-hand and right-hand turn lanes in Spring Street at its intersection with the new access road entrance to address traffic coming from or headed to County Road. No later than twelve (12) months thereafter, the Quarry owner shall commence construction of any required turn lanes and shall prosecute the same diligently to completion; provided the City shall use its reasonable, lawful authority, if necessary, to acquire any needed additional right of way width(s) and/or governmental approvals to accommodate the same; provided, further, the Quarry owner shall reimburse the City for any reasonable expenses incurred and for the final fair market value of any real property interests it may have to acquire.
14. Vibration. Utilize electronic (digital) detonators for all blasts to reduce the off-site effects of blasting activities; not exceed a maximum of 0.50 inches per second peak particle velocity for blast vibrations as measured by any seismograph located under the provisions of subsection 8 and 0.25 inches per second peak particle velocity for blast vibrations as measured at a baseline seismograph located at 2 Ledgeview Drive, Westbrook (City Tax Map 002-000-101); utilize laser profiling and bore hole tracking as part of blast design and implementation to improve the effectiveness of drilling activities and to reduce the risk of fly rock from blasting activities; utilize a blast face profiler to reduce impacts of air blasts.
15. Noise. Limit noise levels for all blasting so as not to exceed 129 dBA, measured in accordance with MDEP Regulations Chapter 375, Section 10.C(4), for one (1) blast per day; 126 dBA for two (2) blasts per day; 124 dBA for three (3) blasts per day; 123 dBA for four (4) blasts per day; limit daily operational noise levels for extractive industry so as not to exceed 75 dBA as measured at the property lines of the parcels on which the Quarry is located; use synthetic screens, urethane liners in crushers, or their substantial equivalents to reduce noise levels associated with crushing and screening; limit on-site speeds to no more than 10 mph; to the extent permitted by state and federal laws and regulations, minimize the volume of sound resulting from required sensors on on-site equipment through the use of sonar and similar alarm systems.
16. Dust. Not allow dust to migrate beyond the property line and take the following measures: enclose the producing areas of crushers so as to reduce the dust and noise generated by the crushing activity; pave the first 500 feet of any entrance from a publicly utilized right-of-way and install wheel washers in order to reduce off-site dust from vehicles leaving the unpaved area of the Quarry; incorporate pre- and post-blast water mitigation to reduce the presence of dust created during blasting activities; utilize a vacuum sweeper and water truck, as needed, on all internal roads to reduce the presence

of dust created during quarrying operations; utilize water fog nozzles as needed at all materials transfer points and stockpiles of quarried materials to reduce the level of dust created by quarrying operations; utilize two-sided truck trimming racks to ensure material is removed from the sides of trucks prior to the vehicles leaving the site; require load covers for trucks transporting material from the quarry operation.

17. Spillage. Perform a daily inspection of truck routes to remove any spillage of gravel, crushed stone, product, or debris from trucks leaving the Quarry from the entrance to Spring Street up to and including the intersection of Spring Street and County Road and the intersection of Eisenhower Drive and Spring Street and shall provide cell phone contact numbers to requesting residents and to City officials so that the Quarry owner may promptly respond to any request to remove any spillage from trucks leaving the Quarry. Respond with clean-up activities immediately upon notification.
18. Community. Meet at least annually with a neighborhood working group constituted by the City, review relevant records with this group, and review and discuss compliance with the performance and use standards. The operator will send a responsible management representative and provide records reasonably related to compliance with the conditions. The operator will submit all of its business records as are reasonably related to compliance no less than quarterly to be kept on file at City Hall, provided that the operator may request that certain business records be kept confidential by the City to avoid compromising the operator's legitimate business interests.

The initial meeting of the neighborhood working group shall be called by the City, but at that first meeting the neighborhood working group shall assume control over all aspects of the group, both substantive and procedural, and shall open the group's membership to all persons or firms as it deems appropriate. The City and its officials thereafter shall serve only as a resource for the working group and, upon reasonable advance notice, shall provide for public meeting space for the group; provided, at a minimum, the City Council ward representative for this area of the City, or his/her designee, shall attend such meetings if so requested, provided further, subject to and consistent with Section 59 of the Consent Order, the working group may call for an audit if the group believes there is a substantial issue of noncompliance with the performance standards of this Section.

19. Compliance Audits. The City may initiate an audit of extractive industry operations to determine compliance with the performance and use standards in this Section to be performed by an independent third party engaged by the City. The auditor shall provide the operator with not less than two (2) working days advance notice of any site visit and shall conduct any such visit during normal business hours. Not more than one (1) audit may be performed in any twelve (12) month period. The results of the audit shall be made available to the operator. These compliance audits shall be separate from and not a limitation upon inspections by the Code Enforcement Officer.
20. The Quarry owner shall comply with the reclamation plan submitted to the City. Any amendments to the reclamation plan shall receive the prior approval of the City Engineer pursuant to the then current requirements of the Department of Environmental Protection.

(Ord. of 10-15-12)

311.6 **Telecommunications Facilities and Towers.** For provisions concerning telecommunications facilities, see Section 202.30. For provisions concerning telecommunications towers, see Section 202.31. (Ord. of 3-3-14)

311 Contract Zone 1 – Millbrook Estates

That pursuant to the provisions of Section II (H) of the Westbrook Zoning Ordinance, a parcel of land on East Bridge Street shown as Lot 10 on Tax Map 12, be rezoned to allow the Westbrook Housing Authority to construct a 150-unit elderly housing and congregate housing project.

Said property is rezoned subject to the following conditions, which have been recommended by the Westbrook Planning Board and are incorporated herein:

1. The development is to contain no more than 100 units of 1 bedroom apartments, 87 which are to be occupied by qualified elderly persons with the remainder of the units being available for elderly or handicapped persons. The project may also contain an adult day care facility for no more than 20 individuals. An additional 50 unit congregate care facility may be constructed in the future subject to specific Site Plan Approval for that phase of the development. All of which development shall take place in accordance with the plans of East Bridge Woods by John H Leasure Architect and Caruthers Engineers dated November 17, 1989 which plans are incorporated herein by reference and made a part of this approval.
2. The remainder of the property shall remain as open space permanently and shall be so marked on the Site Plan to be submitted to the Planning Board.
3. The building will be a maximum of 3 stories consisting of 3 wings in Phase I and a fourth wing which may be constructed in the future for the congregate care facility as Phase II all as shown on page 1 of the above referenced plans.
4. The construction of Phase I including the 3 wings and central core and all site improvements shall be completed within 2 years from the date of receipt of final site plan approval.
5. The building shall be set back from the property lines as follows: Southerly front set back from East Bridge Street at least 230' ; Westerly side yard at least 160' ; Easterly side yard Phase II congregate care wing at least 100'.
6. The developer shall provide landscaping and buffering plan prepared by a registered landscape architect which plan shall provide for adequate vegetative screening and/or fencing to adequately protect the side and front yard neighboring properties and the residents of the project. The plan shall be submitted to the City Planner and City Arborist and approved by them before the issuance of any construction permits.
7. The property shall be assessed each year and shall pay to the City of Westbrook a sum in lieu of real property taxes of \$20,000.00 to cover the cost of providing necessary municipal services.
8. The developer shall provide prior to the construction the following performance guarantees:
 - a performance bond to assure completion of all site improvements in an amount satisfactory to the Director of Engineering;
 - Site improvements and all construction shall be inspected by the Engineering Department during construction to assure compliance with all applicable building and zoning regulations.
9. Side walks shall be installed on both sides of the proposed driveway from East Bridge as shown on the above-referenced plan.

10. This project is proposed to remain a low to moderate income elderly housing project in perpetuity. The developer shall include as a restriction in the deed to the premises a requirement the property shall remain a publicly managed, non-profit, low to moderate income, elderly housing complex x and that the City of Westbrook shall be deeded the premises in the event that the Westbrook Housing Authority should cease to exist or otherwise cease to own and manage this project.
11. A professional; traffic impact study shall be conducted for the Planning Board Site Plan Review, the costs of which shall be borne by the developer.

312 Contract Zone 2 – Brydon Farm

Ordered: #2000-127

Order that the Brydon property, Tax Map 58, Lot 1 and Tax Map 55, Lot 21 be rezoned pursuant to the provisions of the conditional zoning (Section II.H, Westbrook Zoning Ordinance) and subject to the following conditions as reviewed and recommended by the Planning Board:

1. Property use: Brydon Farm is proposed as a clustered residential development consisting of two-unit attached homes. The property surrounding the units will be commonly owned and maintained by a homeowners association with the exception of the roadway that will be dedicated for public use. The road way will have access to route 302 and Pride Street.
2. The new “contract 2” zone will have the following standards:

Permitted Uses

Dwellings

Accessory building

Space and Bulk Requirements

Maximum net residential density 4 dwelling units per net residential acre

Minimum lot area: none

Minimum street frontage: none

Minimum front yard: 15 feet

Minimum side and rear yards: none

Maximum building height: 30 feet

Minimum distance between unattached buildings: 20 feet

Maximum stories: 1

Open Space: All other areas not within the building envelope areas and held in common by the homeowners association

Off-Street Parking

In conformance with Section XVIII of the City of Westbrook Zoning Ordinance

Signs

In conformance with Section XIX of the City of Westbrook Zoning Ordinance

3. As part of the review process, the following additional conditions have been set:
 - a. The developer agrees to \$3,000.00 for recreation facilities to serve primary grade schools and \$35,000.00 to be placed in a fund to support the movement of the Tennis Courts at Pride School. The fund will be paid 50% up-front and have a letter of credit behind the remainder, to be paid at the 75% completion point; and,
 - b. That the applicant receive final subdivision and site plan review from the Planning Board, including any appropriate changes to the site design, recreation areas, and public and privately held space. Any other appropriate state or federal

license approvals must also be received prior to the project beginning construction. All units shall be built to appropriate building standards of the City of Westbrook.

- c. Approval of the Planning Board of appropriate covenants and bylaws associated with establishing a permanent homeowners association to manage commonly owned property.

313 Contract Zone 3 – Hannaford Brothers

Ordered: #2001-91

That the Hannaford Brothers parcel, 100 Hawkes Street, be rezoned to a conditional (contract) zone with the following conditions:

1. Be consistent with all conceptual design issues and commitments shown on a plan called “Conceptual Site Plan” and dated 6-26-2001 (including no access to Hawkes Street or Stroudwater Street, all buffering shown on the plan, and the redevelopment of Bicentennial Park, as shown on the plan);
2. That the Site Plan Review will show improved internal pedestrian circulation;
3. That the Site Plan Review, the delivery times will be identified and set;
4. That the hours of operation be restricted to the present hours of operation (Mon.- Sat, 7-11; Sun. 7-9);
5. The lighting pollution be minimized and contained within the lot lines or appropriately screened and be approved as part of Site Plan Review
6. That the property demonstrate during Site Plan Review that it is ADA accessible;
7. That the out-parcel shown on the plan as a bank be restricted to a similar type of office compatible with the Business General Zone; and,
8. Any other conditions that the City Council chooses to set.

314 Contract Zone 4 – Brown Street Contract Zone

Ordered: #2002-15

Amended

Ordered: #2004-57

A. Purpose: To provide flexible zoning standards that will incite new investment in the neighborhood, leading to higher quality housing and neighborhood conditions.

B. Permitted Uses:

1. Dwellings
2. Day Care homes subject to the provisions of Section XXV
3. Accessory uses including home occupations
4. Government buildings and uses
5. Public and private utility uses

C. Conditional Uses:

1. Neighborhood grocery stores

D. Space and Bulk Regulations:

1. Minimum net residential density for entire Contract Zone:
2. 1 unit per 1,500 sq. ft.
3. Minimum area per residential unit: 350 sq. ft.
4. Minimum lot area: 2,500 sq. ft.
5. Minimum street frontage: 40'
6. Minimum yard setbacks: 0', subject to approval of fire department
7. Minimum distance between buildings: 8'
8. Maximum height of buildings: 4 stories

E. Area to be included in the zone:

(See City of Westbrook Zoning Map)

In addition to the zone, we ask that you set as the following conditions of contract zone approval that:

1. Tax Map 33, lots 226 and 219 will be sold as three-unit condominium projects with each unit owned privately by the person living there.
2. Tax Map 33, lots 215 and 225 will be sold as two-unit condominium projects with each unit owned privately by the person living there.
3. Tax Map 33, lot 228 will be sold as a four-unit condominium project with each unit owned privately by the person living there.

4. PROP will add the improvements cited on the plan, with the exception of F, G, H, and J, which we will hope to do jointly through another grant or road improvement projects.
5. The City will allow PROP to use up to 8 feet of public right of way in front of the units to create green space for the units. These additions of green space will be done during road projects, when the roadways are narrowed and sidewalks relocated.
6. Tax Map 33, lots 231, 233, and 234 may be retained by PROP to be used as rental properties.
7. All dwellings will provide a minimum of one (1) off-street parking space per unit.

315 Contract Zone 5 – Victoria Heights Contract Zone

Ordered: # 2002-117

Amended: #2004-156

- The property is shown as lot 11A, Map 4 of the tax map and is located presently in the RFC Zone and within the mobile home park sub-district. The layout and position of lots is found in the attached plan known as Saco Street Subdivision-Hildreth and White, dated 01-21-02 and is hereby made a part of this record.
- Space and Bulk Criteria for the contract zone:
 - Net residential density: 3 units per NRA
 - Minimum Lot Size: 10,000 square feet
 - Minimum Street frontage: 80'
 - Minimum Front yard setback: 15'
 - Minimum Side yard setback: 10'
 - Minimum Rear yard setback: 15'
 - Max. Building Height 40' except lots 23, 21, 19, which shall be 26' and lots 22, 20, 18, which shall be 29'. Heights shall be defined according to The BOCA ® National Building Code 1999.
 - Maximum Building Coverage: 35%
- Total area of the parcel is 13.83 acres. Total net residential acreage and final lot layout shall be established during subdivision review, when detailed wetland delineation is completed.

Other conditions:

1. The developer shall pay an impact fee of \$500 per lot, or \$15,500. \$12,400 shall go to recreation improvements to be defined by the City and the remainder to a fund set up for the development of sidewalks between the project and where the sidewalks end on Saco Street.
2. All properties shall be buffered or screened and be negotiated during subdivision review. The vegetation for the Tewey property shall be placed on their land while the remaining vegetation for the Saco Street properties shall be placed within the rear buffer yards of the new lots. Vegetation shall be of the evergreen variety for the purpose of providing a visual barrier.
3. The paved right of way shall be 22' in width, with granite curbs at the radii of intersections.
4. Four housing units shall be constructed and sold to eligible first time-homebuyers. The Maine State Housing Authority guidelines shall be used. As a guide, a first time homebuyers in this area shall make a maximum of \$62,000 for a 3+ family and can afford a house costing no more than \$171,800.
5. That the storm water management system be designed such that an organized recreation area is provided in the storage area, during dry periods.
6. Granite curbing shall be used throughout the project.
7. Prior to construction and blasting, the applicant shall conduct a blasting assessment of all adjacent properties and shall show evidence of insurance in the case of damage to adjacent properties. Said insurance shall be kept on file with the City. Any damage to

adjacent properties during construction shall be the responsibility of the developer, in accordance the attached blasting plan.

8. All other design aspects of development shall be subject to final subdivision approval.
9. Street lighting shall be of the cut-off luminare variety.
10. A stockade fence shall be installed on the perimeter of the Tewey property along the new development.
11. Hold in escrow for one (1) year after street acceptance an amount to cover the cost for a new light; at the end of the year, if no request is made, than the escrow shall be returned to the developer.

Any modifications of these conditions shall require City Council approval.

316 Contract Zone 6 - Golder Commons Contract Zone

Ordered: #2004-56

The proposed contract zone will allow for the construction of a 26-unit affordable apartment building. The proposed building will compliment the historic Bridge Street School apartments that currently reside on the property.

Permitted Uses:

1. Dwellings

Space and Bulk Regulations:

1. Maximum Net Residential Density: 28 dwelling units per acre; 66 bedrooms per acre
2. Minimum Lot Area: 1.60 acres
3. Minimum Street Frontage: 75 feet
4. Minimum Front Yard: 0 feet
5. Minimum Side and Rear Yards: 15 feet
6. Maximum Building Height: 4 Stories

Off-Street Parking

1. 1.5 spaces per 2 bedroom unit; 2 spaces per 3 bedroom unit; including handicapped parking in accordance with Section XVIII of the 1973 zoning ordinance.

Additional Conditions

1. A children's play structure will be constructed to provide recreation opportunities for the future residents of the apartment buildings. The specific details and cost of the play structure will be decided upon by the Planning Board, with a recommendation from the Recreation and Conservation Commission, as part of the site plan or subdivision review process.

The apartment units shall be rented at an affordable price as established by the project's funding requirements.

317 Contract Zone 7 - Stroudwater Street Growth Area Contract Zone

317.1 **Purpose.** The purpose of this contract zone is to allow for the construction of a public school and related facilities or a recreational facility, while allowing the possibility of a future residential development at density levels permitted in the Residential Growth Area I, provided certain conditions are met.

317.2 **Permitted Uses.** The following uses are permitted in the Stroudwater Street Growth Area Contract Zone as a matter of right:

| | |
|--------------------------|-----------------------|
| Accessory Uses | Funeral Home |
| Bed & Breakfast Class 2 | Greenhouse or Florist |
| Church | Home Occupation |
| Community Center | Library/Museum |
| Congregate Care Facility | Municipal Facility |
| Dwelling, Single-Family | Neighborhood Grocery |
| Dwelling, Two-Family | |

317.3 **Special Exception.** The following uses are permitted in the Stroudwater Street Growth Area Contract Zone as a special exception under Section 204:

Bed and Breakfast Class 1
Day Care Center
Adult Day Care
Dwelling, Multiple-Family
Medical Office
Hospital
Home Day Care Provider

317.4 **Performance Standards.** The following performance standards apply in the Stroudwater Street Growth Area Contract Zone:

A. Minimum Lot Size: 5,000 S.F. existing; 7,500 S.F. new

B. Dimension Requirements:

- | | |
|------------------------|-----------------------|
| (1) Minimum Lot Width: | 50' existing, 65' new |
| (2) Yard Setbacks: | |
| (a) Front | 10' existing, 15' new |
| (b) Rear | 10' existing, 15' new |
| (c) Side | 10' existing, 15' new |
| (3) Maximum Height: | 40' |

- C. Maximum Footprint Factor: 40%
- D. Maximum Gross Density Factor: 70%
- E. Landscaping Factor: 30%
- F. Residential Density Factor: 1 dwelling unit per 5000 S.F.
- G. Lighting. All outdoor lighting must be of cutoff luminaire variety and must be installed so that no direct lighting is emitted beyond lot lines.
- H. Vibrations. Vibrations must not exceed existing levels at the exterior limits of the building.
- I. Screening. A plan for parking and screening is required for uses other than dwellings, single and two-family. Screening may include, but is not limited to, fencing or plantings.
- J. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operations levels of service and pedestrian safety within a reasonably determined distance from its point of ingress or egress.
- K. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view.

317.5 **Conditions.**

If any use listed as a permitted use or a special exception, other than a municipal school facility and related facilities or municipal recreational facility, is proposed for this contract zoning site, such use shall require an amendment to this contract zoning agreement to establish standards and restrictions upon such development to ensure protection of the wetlands and natural resources on the site and to ensure an appropriate transition from the adjoining Residential Growth Area 1 District to the adjoining Rural District. This requirement shall not apply to a municipal school facility, which shall not require additional zoning action under this section, but will require site plan approval by the Planning Board.

318 Contract Zone 8 - 500 Westbrook LLC Contract Zone

WHEREAS, the City Council finds that the materials submitted to date on traffic are sufficient to allow the Council to make the legislative policy judgment that the requested rezoning is consistent with the Comprehensive Plan and is an appropriate zoning designation for the subject property, understanding that this rezoning does not approve a specific development project and that the specific development project will be reviewed by the Planning Board, at which time more detailed information concerning traffic will be required.

Now, therefore, Ordered that City Council hereby authorizes the establishment of the attached Stroudwater Place contract zone, as recommended by the Planning Board, subject, however, to the condition of the approval of this Contract Zone, which condition is hereby incorporated into the text of the contract zoning district, that the applicant must submit a traffic study containing all information set forth in Section 7 of MDOT's Rules and Regulations Pertaining to Traffic Movement Permits to the Planning Board at the time of application for site plan approval.

318.1 Purpose. This zone consists of approximately 61 acres of currently undeveloped land located between the Westbrook Arterial and Stroudwater Street.* The purpose of this Contract Zone is to enable a high quality integrated, master-planned, mixed-use commercial development that will serve as a gateway to Westbrook from Exit 47, a regional economic hub and a destination for shoppers and visitors to the City, while maintaining an appropriate buffer along Stroudwater Street. The kind of development intended for this zone is further described in the "Guiding Principals for a Master Plan for Stroudwater Place, Westbrook, Maine" by Thompson Design Group dated September ___, 2008 ("Guiding Principals").

It is of critical concern to the City that the development envisioned in this Contract Zone move forward in a way that protects and has minimal impact on traffic, noise or light pollution in surrounding neighborhoods (including the neighborhoods in and around Forest Street, Haskell Street, Rochester Street, Stroudwater Street and Monroe Avenue), school facilities and currently active agricultural businesses.

*On 2/10/14 the City Council approved rezoning of Tax Map 9, Lot 3A therefore this parcel is no longer subject to the CZA. The remaining land in the CZA is Tax Map 9, Lot 3 consisting of 1.95 acres.

318.2 Permitted Uses. The following uses are permitted in the 500 Westbrook LLC Contract Zone as a matter of right:

| | |
|--------------------------------|------------------------|
| Accessory Use | Light Manufacturing |
| Adult Daycare | Media Studio Class 1 |
| Bank Class 2 | Media Studio Class 2 |
| Business/Executive Suite Hotel | Medical Office |
| Business Office | Municipal Facility |
| Class A Lounge | Museum |
| Club or Lodges | Neighborhood Grocery |
| Community Center | Outdoor Farmers Market |

| | |
|--|---|
| Conference/Exhibition Facility | Outdoor Gathering Spaces, including, but not limited to picnic area, parade/fairgrounds, etc. |
| Daycare Center | Outdoor Performing Arts Venue |
| Dwelling, Multiple Family | Parking Facility |
| Education Facility | Public or Private Indoor or Outdoor Recreation or Sports Facility |
| Greenhouse or Florist | Research and Development |
| Grocery Store | Restaurant Class 2 |
| Health Club | Restaurant Class 4 |
| Home Occupation | Retail Class 1 |
| Hotel/Motel | Service Business |
| Intermodal Passenger Transportation Facility | Theater |
| Kiosk Vendor | Veterinary Office |
| Library | |

318.3 **Special Exception.** The following use is permitted in the 500 Westbrook LLC Contract Zone as a special exception under Section 204:

Child Care Center

318.4 **Performance Standards.** The following performance standards apply in the 500 Westbrook LLC Contract Zone:

A. Dimensional Requirements*:

- (1) Minimum Building Setbacks:
 - (a) from Westbrook Arterial 20 feet
 - (b) from Stroudwater Street 200 feet
 - (c) from side property lines 20 feet
- (2) Maximum Height 75 feet
 (exclusive of architectural features which may, upon approval of the design by the Planning Board during site plan review, extend above the roof of the building provided such architectural features do not increase habitable space).

B. Maximum Building Footprint. The total, cumulative footprint of all buildings within the Contract Zone shall not exceed 50% of the land area within the Contract Zone.

C. Maximum Gross Density. The total, cumulative amount of building footprint and impervious surface shall not exceed 78% of the land area within the Contract Zone.

* The dimensional requirements established in this section apply to the Contract Zone as a whole and not to individual lots (if any) within the Contract Zone.

- D. Minimum Landscaping. At least 22% of the total land area within the Contract Zone must be landscaping. Stabilized grass surfaces shall be considered pervious landscaping.
- E. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so that no permanent direct lighting is emitted beyond the lot lines, except for special accent / event lighting oriented towards the Westbrook Arterial. No lighting shall be permitted on architectural features above 75 feet in height.
- F. Buffer. A 50-foot buffer with berms and trees shall be maintained along the entire Stroudwater Street frontage, in order to maintain a continuous visual screen, except where a break in the screen is necessary to provide an emergency access route for public safety purposes.
- G. Traffic Impact. Except for emergency vehicle access as determined to be necessary by the City's public safety officials, there shall be no motor vehicle access between Stroudwater Street and the development, and the only access to the development shall be from the Arterial, or from a connector road which runs only between the development and the Arterial. At the time of site plan review, 500 Westbrook LLC must submit a traffic study providing all information set forth in Section 7 of the Maine Department of Transportation's Rules and Regulations pertaining to Traffic Movement Permits, as such may be amended from time to time.
- H. Parking. Because of the variety of uses proposed by 500 Westbrook LLC, various uses on the property will have different operating hours and different peak-period parking demands. In keeping with principles of optimizing resources, shared parking can therefore be utilized. The Table of Off-Street Parking in Section 505.1.A shall not apply within this Contract Zone. Instead, the number of parking spaces to be provided as each phase of the development is undertaken and in total shall be determined by applying best-practice traffic engineering standards for shared parking and in accordance with a parking management plan. Parking may be provided through a combination of surface parking and parking structures. At final build-out, the majority of parking shall be located in parking structures. Any surface parking, whether provided for an individual phase or for final build-out, shall be adequately screened from pedestrian ways and public streets. Because of the seasonal variation in parking demand for retail uses, a portion of the parking may occur on stabilized grass surfaces to function as overflow parking during peak periods or for special events, but otherwise to function as a fairground/parade ground, field, or other open area.
- I. Sustainability. Buildings and improvements shall, to the extent feasible, utilize materials, techniques and designs which incorporate then-current best practices for energy efficiency, sustainability and low environmental impact.
- J. The final square footage of the development and the square footage of any individual phase shall be determined by the Planning Board during the Site Plan review process. Both total square footage and retail are not to exceed 20% of the

square footage depicted on the program diagram incorporated herein. In addition to any other applicable requirements, at each stage of the Planning Board's review process (including but not limited to the Master Plan Review and review of each individual phase) the Planning Board shall make specific findings that each of the goals described in Section 318.1 are met. At final build-out, the development shall include a mix of the following uses: (1) retail; (2) office space; (3) hospitality and food; and (4) sports and entertainment.

K. In addition to the Performance Standards set forth herein, the development shall comply with Subsection 505.11 of the City's Site Plan Review Design and Performance Standards, except where qualified herein:

- (1) 505.11.3.A (1) Space and Bulk Standards shall not apply.
- (2) 505.11.3.A (2) (b) (ii-iv) Lighting standards shall not apply to special accent/event lighting.
- (3) 505.11.3.A (2) (c) The buffer or screening shall limit the decibel level of all sounds or noise that reach the property lines according to limits set by the Planning Board. After an initial inspection to determine that noise is being emitted, the Code Enforcement Officer reserves the right to hire a consultant or expert in the field of sound measurement so as to not have an unreasonable adverse impact on the abutting properties as determined by the Planning Board. All services billed by the consultant or expert must be paid for by the owner of the property from which the sound is being emitted.
- (4) 505.11.3.B (1) (a) and (b) The Planning Board shall set such standards so as not to have an unreasonable adverse impact on the abutting properties as determined by the Planning Board.
- (5) 505.11.3.B (2) and (3) The Planning Board shall set retail and non-retail hours of operation during the Site Plan review process so as not to have an unreasonable adverse impact on the abutting properties as determined by the Planning Board.
- (6) 505.11.3.C Building Design Standards shall not apply.
- (7) 505.11.3C (1) Access management shall not apply.
- (8) 505.11.3 D (2) A traffic study shall be completed after each phase of the development and shall include, but is not limited to, the new Westbrook Middle School, Monroe Avenue, Rochester Street, Haskell Street, Stroudwater Street and Forest Street areas.
- (9) 505.11.3.D (3) The Planning Board may accept the impact study required by the State Informed Growth Act to the extent the Planning Board is satisfied that such study addresses the requirements of this subsection.
- (10) For the purpose of application of these performance standards to this Contract Zone the terms "residentially zoned occupied property" includes Residential Growth Area 1, Residential Growth Area 2, Residential Growth Area 3 and the Rural Zone.

318.5 Conditions.

1. Master Plan

(a) All buildings within the zone shall be designed and constructed pursuant to an overall plan for development of the property that contemplates an integrated, internally unified mixed-use commercial development consistent with the Guiding Principles and the goals of this Contract Zone (“master plan”). The master plan will incorporate the following design principles:

- High quality public spaces will be an integral component of the development as a whole and of individual phases.
- The development as a whole and individual phases will be streetscape oriented – designed so that visitors will park in central facilities and then walk to their destinations, with building entrances located along and oriented toward the internal streets.

The Master Plan shall address the timing and type of public amenities, including, but not limited to, transportation alternatives, trail connections, outdoor gathering areas and other public spaces. It shall include an activation program, developed in consultation with the Westbrook Recreation Department, for the management of multi-use, active recreation fields. The ice skating facility shall provide for 2.5 free hours of ice time to Westbrook residents and Westbrook school-aged hockey teams each day. The schedule shall be developed in consultation with the operator and the Recreation Department.

(b) In order to achieve the goals of an integrated, master-planned, mixed-use commercial development that will serve as a gateway to Westbrook from Exit 47, a regional economic hub and a destination for shoppers and visitors to the City, the master plan shall include a master lease or declaration of covenants containing restrictive covenants which preclude the following uses: “bargain” or “dollar” stores, wholesalers, sellers of distressed or salvaged merchandise and other retailers whose advertising, marketing practices or appearance, either interior or exterior, are not consistent with the kind of quality, destination-retail development described in the Guiding Principles. In addition, the master lease or declaration shall incorporate architectural design guidelines controlling matters such as streetscape design, façade treatment, appearance of public spaces, quality of common areas, location and appearance of kiosk vendors, signage, landscaping and lighting, placement of buildings with respect to the public spaces, and such other features of development which 500 Westbrook LLC deems appropriate to ensure a quality project and a quality experience for customers of and visitors to the development.

(c) The master plan shall be submitted as part of the application for site plan review for the first phase to be constructed. Any subsequent revisions to that initial master plan shall be submitted as part of each application for site plan review for subsequent phases. Before approving any phase, the Planning Board must approve the master plan as being consistent with the Guiding Principles and meeting the requirements of this Contract Zone.

- (d) The development of the property shall be substantially consistent with the design principles articulated in the Guiding Principles and with the design concepts illustrated in the four depictions attached hereto and incorporated herein.

- 2. **Phasing.** The property may be developed in phases, with the Planning Board determining during site plan review what infrastructure improvements are required for the incremental development of each phase. At a minimum, an outdoor farmers market area and an intermodal passenger transportation facility must be constructed within two years after the first 100,000 square feet of commercial space is occupied. No more than 400,000 square feet of commercial space may be issued a certificate of occupancy until an outdoor farmers market area and an intermodal passenger transportation facility has been constructed. No more than 800,000 square feet of commercial space may be issued a certificate of occupancy until a central common/outdoor gathering space has been constructed. No more than 1,200,000 square feet of commercial space shall be issued a certificate of occupancy until an indoor ice skating facility, arena or similar civic facility has been constructed, except that, as an alternative, the City and 500 Westbrook LLC may agree on a monetary contribution from 500 Westbrook LLC to assist the City in constructing or operating an off-site facility.

318.6 **Definitions.** As used in this Section 318, Contract Zone 8 – 500 Westbrook, LLC, the following terms shall have the following meanings:

- i. **Class A lounge.** An establishment which holds a Class X liquor license from the State of Maine, which qualifies as a “Class A Lounge” under the provisions of Title 28-A of the Maine Revised Statutes and is licensed by the Department of Health and Human Services as required by 28-A M.R.S.A. § 1065(5). This category excludes bottle clubs and restaurants that allow patrons to bring and consume their own alcoholic beverages.
- ii. **Business/Executive Suite Hotel.** A hotel that offers customary hotel services and amenities to the traveling public on a daily basis and also has rooms or suites available for longer term rentals, designed and intended to accommodate businesses or institutions and their employees, contractors or consultants who require temporary lodging while working on temporary assignment or relocating to the Westbrook area.
- iii. **Conference/exhibition facility.** A facility used for conferences, seminars and exhibitions, and entertainment, which may include accommodations for sleeping, food-preparation and eating, recreation, and meeting rooms, and retail sales and services that are offered primarily for the convenience of persons attending conferences, seminars or exhibitions at the facility. A conference/ exhibition facility which includes sleeping rooms for guests shall also be considered a

hotel/motel, subject to the requirements of this ordinance applicable to hotels/motels.

- iv. **Health club.** A facility where members or nonmembers use equipment or space for the purpose of physical exercise. This term includes facilities commonly known as fitness centers or wellness centers.
- v. **Intermodal passenger transportation facility.** A building, structure or location where two or more modes of transportation intersect and passengers can transfer between modes.
- vi. **Kiosk Vendor.** An outdoor vendor selling food or consumer goods or services from a wheeled cart or a kiosk (a small structure with one or more open sides).
- vii. **Library.** A public and/or non-profit facility in which literary, musical, artistic or reference materials (such as books, manuscripts, recordings or films) are kept for use but not normally for sale.
- viii. **Museum.** A building having public significance due to its architecture or former use or occupancy or a building serving as a repository for a collection of lasting interest or value arranged, intended and designed to be used by members of the public for viewing with or without an admission charge.
- ix. **Outdoor farmers market.** An area designated for the seasonal selling at retail of vegetables, produce, flowers, orchard products and similar agricultural products, or farm-related products such as jams, jellies, syrups, dairy products, etc.
- x. **Outdoor performing arts venue.** An area designed and arranged so that it may be used for outdoor concerts or performances, including live or multimedia performances or showing of films or videos. It may include a bandstand, band shell, stage or other shelter for performers, and seating or seating areas for audiences, any of which may be permanent or temporary. This use category does not include drive-in theaters.
- xi. **Public or private indoor or outdoor recreation or sports facility.** An indoor or outdoor space, which may be publicly or privately owned, that is designed and equipped for the conduct of sports and leisure time activities, excluding water slides, amusement parks and racetracks, and which may include spectator sporting events.
- xii. **Research and development.** A laboratory or similar facility for investigation into the natural, physical or social sciences, which may include engineering and product development. Such use shall not involve the mass manufacturing, fabrication, processing or sale of products.
- xiii. **Restaurant Class 4.** A wine bar, winery, brew pub or similar establishment which serves for consumption on the premises wine, malt liquor, or low-alcohol spirits products, but not spirits, as those terms are defined in Section 2 of Title 28-

A of the Maine Revised Statutes. A restaurant class 4 must serve food, but is not required to have a kitchen and the food need not be prepared on the premises. Restaurant Class 4 excludes bottle clubs and restaurants that allow patrons to bring and consume their own alcoholic beverages.

- xiv. **Theater.** A building or part of a building used to show motion pictures, or for drama, dance, musical or other live performances. This term includes multi-screen cinemas, but excludes drive-in theaters.

319 Contract Zone 9 - The Elms Contract Zone

This zoning district was created by Contract Zoning Agreement between Scott A. Balfour and the City of Westbrook, dated February 4, 2013, and is subject to all of the requirements of that Contract Zoning Agreement. The subject property is described as Map 40 Lot 206 and 102 Cumberland Street and consists of approximately 0.99 acres. The property is located within the Cumberland Mills Historic District of the National Register of Historic Places. The subject property is located within the General Development Shoreland Zone and Village Review Overlay Zone and shall comply with the requirements of those zones.

The purpose of The Elms Contract Zoning District is to provide for a flexible mix of uses in order to enhance the economic feasibility for this unique property given its unique size, scale, nature, location, historical use and significance. An appropriate mix of permitted residential and commercial uses, based on the unique features of the building, location and neighboring industrial, residential and commercial uses and zones, will provide for the continued viability of this property, while remaining consistent with the goals established in the City's Comprehensive Plan.

- 319.1 **Permitted Uses.** The property owner is authorized to establish on the property any of the following uses as a matter of right:

| | |
|-------------------------------|--------------------|
| Accessory Use | Home Occupation |
| Bed and Breakfast Class 1 & 2 | Hotel or Motel |
| Business Office | Library or Museum |
| Club or Lodge | Medical Offices |
| Congregate Care Facility | Restaurant Class 2 |
| Dwelling, Single-Family | Service Business |
| Dwelling, Two-Family | |
| Dwelling, Multiple-Family | |
| Greenhouse or Florist | |

Uses under this section shall have the same definitions as are set forth in the Land Use Ordinances.

- 319.2 **Special Exception Uses.** The property owner may establish the following uses as special exceptions, subject to review and approval under Section 204 of the Land Use Ordinances:

Educational/Vocational
Funeral Home
Retail Class 1

Uses in this section shall have the same definitions as are set forth in the Land Use Ordinances.

- 319.3 **Performance Standards.** The following performance standards shall apply in The Elms Contract Zoning District:

- A. Preservation of historic structure. Upon destruction or demolition of the building, the City Council shall have the authority, after notice and hearing as required by State law, to terminate the Agreement and rezone of the Property to the prior or any successor zoning districts. In such an event, the Property shall then be used only for such other uses as are otherwise allowed by law.
- B. Buildings, additions and/or alterations must retain the character of the structures. This includes, but is not limited to, architectural style, windows, doors, roof pitches, and siding material.
- C. Dimensional requirements:
 - (1) Setbacks: There are no dimension requirements for yard depths.
 - (2) Height: Building height may not exceed the current building height.
 - (3) Maximum Footprint Factor. 40%.
 - (4) Maximum Gross Density Factor. 70%
 - (5) Landscaping Factor. 30%.
 - (6) Residential Density Factor. 1 dwelling unit per 2500 S.F. of base site area. (However, minimum size of a residential unit shall be 500 S.F., and an additional 150 S.F. per each additional bedroom.)
- D. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so no direct lighting is emitted beyond lot lines.
- E. Noise. Noise levels must not exceed existing levels at the exterior limits of the property.
- F. Vibrations. Vibrations must not exceed existing levels at the exterior limits of the building.
- G. Odors. Odors must not exceed existing levels at the lot lines.
- H. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operation level of service and pedestrian safety within 200 feet of the point of ingress or egress.
- I. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view from the public way.

- J. Parking Requirements. The parking requirements of Section 505.1 of the Land Use Ordinances are applicable to all uses in The Elms Contract Zoning District.
- K. Signage. As regulated by Section 404.3.1 Signs in the City Center District.
- L. Agreement to be recorded. The Property Owner shall record this Contract Zoning Agreement in the Cumberland County Registry of Deeds and shall submit proof of recording to the Westbrook Code Enforcement Officer and the City Planner.
- M. Amendments to Agreement. The provisions of this Contract Zoning Agreement shall be deemed restrictions on the use of the property and shall be amended only upon further written agreement of the City of Westbrook and the Property Owner or his successors in interest to the Property. Any amendment will be reviewed and approved in accordance with the requirements of 30-A M.R.S.A. § 4352(8).
- N. Other reviews. Approval of this Agreement will not serve as a waiver of any other applicable code or review requirements of the Land Use Ordinances.
- O. Department of Environmental Protection. Because the Property is located in the General Development Shoreland Zoning District, this Contract Zoning Agreement shall be forwarded to the Commissioner Maine Department of Environmental Protection.

320 Contract Zone 10 – Gateway West

This zoning district was created by the Contract Zoning Agreement Between Storage Realty Corporation and the City of Westbrook for Gateway West, dated May 6, 2013 and is subject to all of the requirements of that Contract Zoning Agreement and the Village Review Overlay Zone District. The subject property is specifically described in the Contract Zoning Agreement and the map attached to that Agreement and is referred to in that Agreement as the Rezoned Property. Upon fulfillment of the requirements of the Contract Zoning agreement, including but not limited to, the demolition of the dilapidated building and the land swap for the construction of roadway improvements identified as necessary in the Comprehensive Plan, the City Council enacted the subject Contract Zoning Agreement which allows for a wider range of uses than currently allowed in the City Center Zoning District. The Contract Zoning Agreement and adoption of this zoning district do not approve a specific development project and the specific development project will be reviewed by the Village Review Overlay Zone Committee and must receive final approval by the Planning Board.

320.1 Purpose. This zone is intended to promote the redevelopment of the western gateway of downtown Westbrook. Redevelopment of the western end of downtown has so far included a 3unit live-work condominium building on the block to the north of the subject property and a multi-unit apartment building on this same block. Redevelopment of the subject property is intended to spur additional redevelopment as this is the westernmost parcel in the downtown and is immediately visible upon entering downtown. Building scale, materials and relationship of the first floor to the sidewalk and the street is critical and the design shall be of a caliber that is appropriate for a gateway into the downtown. Development of the subject property shall be consistent with the urban design and streetscape recommendations of the Downtown Streetscape Plan adopted in 2009.

320.2. Permitted uses as of right. The Property Owner is authorized to establish on the Rezoned Property any of the following uses as a matter of right:

| | |
|-------------------------------|------------------------------------|
| Accessory Use | Florist |
| Bank Class 1 and 2 | Hotel or Motel |
| Bed and Breakfast Class 1 & 2 | Library or Museum |
| Business Office | Media Studio Class 2 |
| Child Care Center | Municipal Facility |
| Congregate Care Facility | Medical Offices |
| Day Care Center | Neighborhood Grocery |
| Dwelling, Multiple-Family | Parking Facility |
| Educational/Vocational | Private Indoor Recreation Facility |
| Food Cart Vendors | Restaurant Class 2 |
| Home Occupation | Retail Class 1 & 3 |
| | Service Business |

Uses under this section shall have the same definitions as are set forth in the Land Use

Ordinances.

320.3. **Special exception uses.** The Property Owner may establish the following uses as special exceptions, subject to review and approval under Section 204 of the Land Use Ordinances:

Church
Community Center
Light Manufacturing

Research and Development
Theater

Notwithstanding the requirements of Section 204.1.D(9) of the Land Use Ordinances, special exception uses shall not be required to provide off-street parking.

Uses in this section shall have the same definitions as are set forth in the Land Use Ordinances.

320.4. **Performance Standards.** The following performance standards shall apply in The Gateway West Contract Zoning District:

- A. Minimum Lot Size: None
- B. Dimensional Requirements:
 - (1) No setbacks are required.
 - (2) Maximum height: No maximum.
- C. Maximum Footprint Factor: 100%.
- D. Maximum Gross Density Factor: 100%.
- E. Landscaping Factor: None.
- F. Residential Density Factor: 1 dwelling unit per 500 S.F. of base site area.
- G. Lighting. All outdoor lighting must be of the cutoff luminaire variety and must be installed so no direct lighting is emitted beyond lot lines.
- H. Noise. Noise levels must not exceed existing levels at the exterior limits of the property.
- I. Vibrations. Vibrations must not exceed existing levels at the exterior limits of the building.
- J. Odors. Odors must not exceed existing levels at the lot lines.

- K. Traffic Impact. The traffic pattern from a change or expansion of use must be designed so as to maintain the existing traffic operation level of service and pedestrian safety within 200' of its point at ingress or egress.
- L. Storage of Materials. All materials must be stored within an enclosed structure so as to be screened from view.
- M. Parking Requirements. The parking requirements of Chapter V are only applicable to the following uses in the Gateway West Contract Zoning District: Day Care Center, Child Care Center, and Multiple-Family Dwelling.
- N. Signage: Signage shall comply with the requirements of Section 404.3.1 (the provisions for signs in the City Center District) of the Land Use Ordinances.
- O. Access: Access to the site shall be limited to a single combined access and egress driveway onto Main Street and a single combined access and egress driveway onto William Clarke Drive. This access shall also provide access to the property shown on Tax Map 32 as Lot 38. The configuration and exact location of the driveways will be determined as part of the site plan approval for the new development.

Chapter IV – Special Standards and Overlay Districts

401 Shoreland Protection Zone

401.1 **Purpose.** The purpose of these overlay zoning districts is to maintain safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect water dependent industries; to protect freshwater wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, visual as well as physical points of access to inland waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

401.2 **Effective Date of Ordinance and Ordinance Amendments.** This Ordinance, which was adopted by the municipal legislative body on June 1, 2009, shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, or Ordinance Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance or Ordinance Amendment, within forty-five (45) days of his/her receipt of the Ordinance, or Ordinance Amendment, it shall be automatically approved.

Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of this Ordinance, or Ordinance Amendment, if the Ordinance, or Ordinance Amendment, is approved by the Commissioner.

401.3 **Authority.** These zones have been prepared in accordance with the provisions of Title 38 Sections 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.).

401.4 **Applicability.** The Shoreland Zone applies to all land areas within 250 feet, horizontal distance, of the normal high-water line of any great pond, or river; within 250 feet, horizontal distance, of the upland edge of a freshwater wetland; and within 75 feet, horizontal distance, of the normal high-water line of a stream.

The Shoreland Zone along streams includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of a great pond or river, or within two hundred and fifty (250) feet, horizontal distance, of the upland edge of a freshwater wetland. Where a stream and its associated shoreland area is located within two hundred and fifty (250) feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.

This ordinance also applies to any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.

Within the Shoreland Zone there are three (3) districts. These districts are as follows:

A. Resource Protection. All land areas within 250 feet, horizontal distance, of the normal high-water line of any great pond, river, or freshwater wetland; plus the following:

(1) Lands in the Resource Protection District that border the northern end of the General Development Shoreland Zone may also include all land, horizontal distance, within the normal high-water line of any great pond, or river or the 40 foot contour interval. Land within the 40 foot contour interval may be a greater horizontal distance than the measurement stated in Section 401.3.A..

B. General Development Shoreland Zone. Those shoreland areas having discernable patterns of intensive commercial, industrial, or recreational uses. The General Development Shoreland Zone includes the following types of area:

(1) Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:

(a) Areas devoted to manufacturing, fabricating or other industrial activities;

(b) Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and

(c) Areas devoted to intensive recreational development and activities.

Portions of the General Development Shoreland Zone may also include residential development; however, no General Development Shoreland Zone was designated based solely on residential use. All of the provisions of the Shoreland Zone apply to the General Development Shoreland Zone unless specifically noted otherwise.

C. Stream Protection District. All land within 75 feet, horizontal distance, of the normal high-water line of a stream and its associated wetlands;

401.5 Shoreland Zoning District and Zoning Map.

A. Within the Shoreland Zoning district there are three subdistricts. These subdistricts are applicable as shown on the Westbrook Zoning Map as the Resource Protection, the General Development Shoreland Zone, and the Steam Protection District.

B. If amendments, in accordance with section 401.3 of this Ordinance, are made in the district boundaries or other matter portrayed on the zoning map, such changes shall be made on the Zoning Map within thirty (30) days after the amendment has been approved by the Commissioner of the Department of Environmental Protection.

401.6 Administration.

A. Permits required. A shoreland zoning permit shall be required to engage in listed uses of land or structures within the shoreland zoning district including expansion, change or replacement of existing uses or structures. The Code Enforcement Officer shall be responsible for issuing permits for those uses and activities listed as Permitted Uses in the shoreland zone. The Planning Board shall issue shoreland permits for those uses listed as Conditional Uses. Any permit required by this Section shall be in addition to any other permit required by any statute, ordinance or other provision of this Ordinance. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.

B. Permit Application.

- (1) Every applicant for a permit shall submit a written application, including a scaled site plan, on a form provided by the City, to the Code Enforcement Officer.
- (2) All applications shall be signed by owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.
- (3) Applications shall be dated, and the time of receipt shall be noted by the Code Enforcement Officer.
- (4) A valid plumbing permit, including a site evaluation approved by the Plumbing Inspector, shall be submitted when a proposal requires the installation of a subsurface sewage disposal system.

C. Procedure for Administering Permits.

- (1) Within 35 days of the date of receiving a written application, the Planning Board or Code Enforcement Officer, shall notify the applicant in writing either that the application is complete, or, if incomplete, what additional material is needed.
- (2) The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.
- (3) The Planning Board or the Code Enforcement Officer, as appropriate, shall A. approve; B. approve with conditions; or, C. deny all permit applications in writing within 35 days of receiving a completed application, except that if the Planning Board has a waiting list of applications, its decision shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application or within 35 days of the public hearing. The Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:

- (a) Will maintain safe and healthful conditions,
- (b) Will not result in water pollution, erosion, or sedimentation to surface waters,
- (c) Will adequately provide for the disposal of all wastewater,
- (d) Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat,
- (e) Will conserve shore cover and visual, as well as actual, points of access to inland waters,
- (f) Will protect archaeological and historic resources as designated in the comprehensive plan,
- (g) Will avoid problems associated with flood plain development and use, and
- (h) Is in conformance with the provisions of section 401.6 of this Ordinance.

The written decision shall include the findings and reasoning, as well as any conditions imposed to ensure full compliance with the review criteria.

- D. **Expiration of Permit.** Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period, unless the Planning Board has granted an extension prior to the end of the one-year period, for up to one additional year. If a substantial start is made within one year of the issuance of the permit or within the extension period granted by the Planning Board, the applicant shall have one additional year to complete the project. If the project is not completed within that period of time, then the permit shall expire and become null and void.
- E. **Installation of Utility Service.** No public or private utility may install electric, gas, water, or phone service to any new structure located in the shoreland zone, unless written authorization is first obtained from the Code Enforcement Officer, indicating that all permits required under this or any previous ordinance have been issued. The Code Enforcement Officer shall be notified upon completion of the installation.

401.7 Performance Standards in the Shoreland Zone Areas. All land use activities within the Shoreland Zone districts shall conform to the following applicable performance standards:

- A. **Principal Uses (PB = Planning Board CEO = Code Enforcement Officer)**
 - 1. **Resource Protection.**
 - a. One and two family residential, including driveways – No
 - b. Multi-unit residential - No
 - c. Commercial - No
 - d. Industrial - No
 - e. Governmental and Institutional - No
 - f. Small non-residential facilities for educational, scientific or nature interpretation purposes – No
 - g. Structures accessory to allowed uses – No

2. General Development Zone.

- a. One and two family residential, including driveways – CEO
- b. Multi-unit residential - PB
- c. Commercial (as allowed in the underlying Zoning District) – PB
- d. Industrial (as allowed in the underlying Zoning District) – PB
- e. Governmental and Institutional – PB
- f. Small non-residential facilities for educational, scientific or nature interpretation purposes - PB
- g. Structures accessory to allowed uses - CEO

3. Stream Protection District.

- a. One and two family residential, including driveways – No
- b. Multi-unit residential – No
- c. Commercial – No
- d. Industrial – No
- e. Governmental and Institutional – No
- f. Small non-residential facilities for educational, scientific or nature interpretation purposes – No
- g. Structures accessory to allowed uses - No

B. Space and bulk regulations

(1) Minimum lot standards in the shoreland zone areas

The space and bulk standards of the underlying district shall apply except as otherwise listed below:

(a) Dwelling unit and public and private recreational facilities:

40,000 S.F.

Minimum shore frontage: 300'

(b) Governmental, institutional, commercial, or industrial per principal structure:

60,000 S.F.

Minimum shore frontage: 300'

(c) Building height:

Underlying district requirements, not to exceed thirty-five (35) feet.

(2) Minimum lot standards in the general development shoreland zone.

The space and bulk standards of the underlying districts shall apply except as otherwise listed herein. The following standards shall apply to parcels not served by public water and sewer and to open space areas in existence at the time of this ordinance and as described by their map and lot numbers: ((032*000*014 (Sacarrappa Park), 033*000*145 (ball fields), 033*000*148 (Riverwalk), 033*000*157 (Riverwalk), 033*000*192 (Riverbank Park), 033*000*194 (Riverwalk), 039*000*004 (ball fields), 040*000*197 (ball fields)). (Ord. of 11-2-09)

(a) Shore frontage/dwelling unit: 300 feet,

(b) Lot area for governmental, institutional, commercial, or industrial per principal structure: 60,000 square feet
Minimum shore frontage: 300 feet

- (3) If more than one residential unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use. (Ord. of 11-2-09)

C. Principal and accessory structures

- (1) All new principal and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of great ponds, and seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, except that in the General Development Shoreland Zone the setback from the normal high-water line shall be at least twenty-five (25) feet, horizontal distance. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified shall apply.

- (a) The water body, tributary stream or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.

- (2) New structures are prohibited within floodplains along rivers and floodplains within along artificially formed great ponds along rivers as they are located within the shoreland zone and are defined by the 100 year flood plain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.

The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood plain soils.

- (3) The total footprint area of the ground floor of all structures, parking lots and other non-vegetated surfaces within the shoreland zone shall not exceed twenty (20) percent of the lot area located within the shoreland zone, including land area previously developed. Lot coverage in the General Development Shoreland Zone shall not exceed seventy (70) percent.
- (4) Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils, provided: that the structure is limited to a maximum width of four (4) feet; that the structure does not extend below or over the normal high-water line of a water body or upland

edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, Title 38, Section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

- (5) Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection and Stream Protection Districts, shall not exceed thirty-five (35) feet in height. This provision shall not apply to structures such as transmission towers, windmills, antenna, and similar structures having no floor area. (Ord. of 11/2/09)

D. Piers, Docks, Wharves, Bridges and Other Structures and Uses Extending Over or Beyond the Normal High-Water Line of a Water Body or Within a Wetland.

- (1) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion,
- (2) The location shall not interfere with developed or natural beach areas,
- (3) The facility shall be located so as to minimize adverse effects on fisheries,
- (4) The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses. A temporary pier, dock or wharf shall not be wider than six feet for non-commercial uses.
- (5) No new structure shall be built on, over, or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity,
- (6) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district,
- (7) Except in the General Development Shoreland Zone, no structure built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall exceed twenty (20) feet in height above the pier, wharf, dock or other structure.
- (8) New permanent piers and docks shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

E. Parking Areas

- (1) Parking areas shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located, except that the

setback requirements for parking areas serving public boat launching facilities, in districts other than the general development shoreland zone, may be reduced to no less than fifty (50) feet, horizontal distance, from the normal high-water line or upland edge of a wetland if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream.

- (2) Parking areas shall be designed to direct stormwater runoff into the City's stormwater management system, where available. Otherwise, stormwater runoff shall flow indirectly into a water body, and, whenever feasible, runoff shall be detained on-site.
- (3) Parking areas shall be designed in accordance with the requirements of Section 505 of this Ordinance.

F. Roads and Driveways. The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

- (1) Roads and driveways shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

On slopes of greater than twenty (20) percent the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance for each five (5) percent increase in slope above twenty (20) percent.

This subsection shall not apply to either approaches to water crossings or to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline or tributary stream due to an operational necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of this subsection except for that portion of the road or driveway necessary for direct access to the structure.

- (2) Existing public roads may be expanded within the legal road right-of-way regardless of its setback from a water body, tributary stream or wetland.
- (3) New roads and driveways are prohibited in a Resource Protection District except that the Planning Board may grant a permit to construct a road or driveway to provide access to permitted uses within the district or if the Planning Board finds

that no reasonable alternative route or location is available outside the district. Any road and/or driveway permitted in a Resource Protection District shall be set back as far as practicable from the normal high-water line of a water body, tributary stream, or upland edge of a wetland.

- (4) Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in subsection M.
- (5) Road and driveway grades shall meet the Design Standards of the Subdivision Ordinance, Section 502.5.
- (6) In order to prevent road and driveway surface drainage from directly entering water bodies, tributary stream or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least fifty (50) feet wide, plus an additional two (2) feet in width for every one (1) percent of the average slope between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage that is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.
- (7) Stormwater drainage for roads and driveways shall be directed onto the unscarified buffer strips in such a manner as to minimize road, driveway, and ditch erosion. To accomplish this, the following shall apply:

- (a) Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:

| <i>Slope Grade (%)</i> | <i>Spacing (Feet)</i> |
|------------------------|-----------------------|
| 0 – 2 | 250 |
| 3 – 5 | 200 – 135 |
| 6 – 10 | 100 – 80 |
| 11 – 15 | 80 – 60 |
| 16 – 20 | 60 – 45 |
| 21+ | 40 |

- (b) Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.
 - (c) On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle downslope from a line perpendicular to the center line of the road or driveway.
 - (d) Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective function, and their inlet and outlet ends shall be stabilized with appropriate materials.
 - (e) A shoreland zoning permit is not required for the maintenance and repair of an existing road culvert if:

- (i) The new culvert is not more than one standard culvert size wider in diameter,
- (ii) It is not more than 25% longer than the culvert being replaced, and
- (iii) It is not longer than 75 feet.

This exemption shall apply to related excavation and filling. A person repairing, replacing or maintaining an existing culvert shall ensure that erosion control measures are taken to prevent sedimentation and to ensure that fish passage is not blocked in the watercourse.

- (8) Storm water runoff control systems shall be maintained on a regular basis to assure effective functioning.

G. Storm Water Runoff

- (1) All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas shall be retained in order to reduce runoff and encourage infiltration of storm waters.
- (2) Storm water runoff control systems shall be maintained by the property owner as necessary to ensure proper functioning.

H. Septic Waste Disposal. Sewage disposal systems shall not be located on natural ground slopes greater than 20%. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules (Rules), and the following: a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone. The Rules require new systems, excluding fill extensions, to be constructed no less than one hundred (100) horizontal feet from the normal high-water line of a perennial water body. The minimum setback distance for a new subsurface disposal system may not be reduced by variance.

I. Essential Services

- (1) Where possible, the installation of essential services shall be limited to existing public ways and existing service corridors.
- (2) The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection District or within the required shoreland zone setback from a stream, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to

minimize any adverse impacts on surrounding uses and resources, including visual impacts.

- (3) Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

J. Mineral Exploration and Extraction

- (1) Exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of total ground surface area. A permit from the Code Enforcement Officer shall be required for mineral exploration, which exceeds the above limitation. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures upon completion of exploration, so as to restore disturbed areas and to protect the public health and safety.

- (2) Mineral extraction where permitted shall also meet the following conditions:

- (a) A reclamation plan shall be filed with, and approved by the Planning Board before a permit granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of paragraph (c) below.
- (b) No part of any extraction operation, including drainage and runoff control features shall be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within seventy-five (75) feet, horizontal distance, of any property line, without written permission of the owner of such adjacent property.
- (c) Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:
 - (i) All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.
 - (ii) The final graded slope shall be two and one-half to one (2.5:1) slope or flatter.
 - (iii) Top soil or loam shall be retained to cover all disturbed land areas, which shall be re-seeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.
- (d) In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts

associated with mineral extraction operations on surrounding uses and resources as provided in Section 401.5.

K. Agriculture

- (1) All spreading of manure shall be accomplished in conformance with the *Manure Utilization Guidelines* published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. §§ 4201-4209).
- (2) Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond or within seventy-five (75) feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.
- (3) Agricultural activities within the shoreland zone involving tillage of soil greater than forty thousand (40,000) square feet in surface area shall require that a Conservation Plan be filed with the Planning Board prior to conducting such activities. Failure to comply with the provisions of the plan shall be a violation of this Ordinance.
- (4) There shall be no new tilling of soil within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond; within seventy-five (75) feet, horizontal distance, from other water bodies; nor within twenty-five (25) feet, horizontal distance, of tributary streams, and wetlands. Operations in existence on the effective date of this Ordinance, and not in conformance with this provision, may be maintained.
- (5) New livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond; within seventy-five (75) feet, horizontal distance of other water bodies, nor; within twenty-five (25) feet, horizontal distance, of tributary streams and wetlands. Livestock grazing associated with ongoing farm activities and that are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.

L. Timber harvesting

- (1) There shall be no timber harvesting, except to remove safety hazards, within the strip of land extending one hundred (100) feet inland from the normal high-water line of a great pond in a shoreland area zoned for resource protection.
- (2) Except in areas described in paragraph (1) above, timber harvesting shall conform with the following provisions:
 - (a) Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 ½ feet above ground

level on any lot in any ten (10) year period is permitted provided that a well-distributed stand of trees and other natural vegetation remains, as calculated using the formula in Section 401.6.L.(2).(b). below.

In addition:

- (i) Within one-hundred (100) feet, horizontal distance of the normal high-water line of a great pond and within seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, there shall be no clear-cut openings; and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.
 - (ii) At distances greater than one-hundred (100) feet, horizontal distance, of a great pond and greater than seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create single clear-cut openings greater than ten-thousand (10,000) square feet in the forest canopy. Where such openings exceed five thousand (5,000) square feet, they shall be at least one hundred (100) feet apart. Such clear-cut openings shall be included in the calculation of total volume removal. For the purpose of these standards, volume may be considered to be equivalent to basal area.
- (b) No accumulation of slash shall be left within fifty (50) feet of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet in height above the ground. Any debris that falls below the normal high-water line of a water body shall be removed.
 - (c) Timber harvesting equipment shall not use stream channels as travel routes except when:
 - (d) Surface waters are frozen; and
 - (e) The activity will not result in any ground disturbance.
 - (f) All crossings of flowing water shall require a bridge or culvert, except in area with low banks and channel beds that are composed of grave, rock or similar hard surface which cannot be eroded or otherwise damaged.
 - (g) Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.
 - (h) Skid trails and other sites where timber harvesting machinery exposes mineral soil, except for water crossings, shall be located such that an unscarified strip of vegetation of at least one hundred (100) feet in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided,

however, that no portion of such exposed mineral soil on a back face shall be closer than twenty-five (25) feet from the normal high-water line of a water body or upland edge of a wetland.

- (i) Timber harvesting operations exceeding the forty (40) percent limitation in paragraph (a) may be allowed by the Planning Board when an applicant has submitted a forest management plan signed by a Maine licensed professional forester, which clearly demonstrates that such an exception is necessary for good forest management and is carried out in accordance with the purposes of shoreland zoning. The Planning Board shall notify the commission of each exception allowed.

M. Clearing of Vegetation for Development

- (1) Within a shoreland area zoned for Resource Protection abutting a great pond, no cutting of vegetation is allowed within the strip of land extending 100 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards. Elsewhere, in any Resource Protection District, the clearing of vegetation is limited to that which is necessary for uses expressly authorized in that district.
- (2) Except in areas as described in paragraph (1) above, and except to allow for the development of permitted uses, within a strip of land extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond, and seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:
 - (a) There shall be no cleared opening greater than two hundred and fifty (250) square feet in the forest canopy, or any other existing woody vegetation if a forested canopy is not present, as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created.
 - (b) Selective cutting of trees within the buffer strip is allowed provided that a well distributed stand of trees and other natural vegetation is maintained. For the purposes of this section a “well distributed stand of trees” adjacent to a great pond or a river or stream flowing to a great pond, shall be defined as maintaining a rating score of 24 or more in each 25-foot square by 50-foot rectangle (1250 square feet) area as determined by the following rating system.

| Diameter of Tree at 4 ½ feet above ground level | Points |
|---|--------|
| 2 – < 4 inches | 1 |
| 4 – < 8 inches | 2 |
| 8 – < 12 inches | 4 |
| 12 inches or greater | 8 |

Adjacent to other water bodies, tributary streams and wetlands, a “well distributed stand of trees” is defined as maintaining a minimum rating score of 16 per 50-foot rectangular area.

The following shall govern in applying this point system:

- (i) The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer.
- (ii) Each successive plot must be adjacent to, but not overlap a previous plot.
- (iii) Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance.
- (iv) Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by is Ordinance.
- (v) Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

For the purposes of this section “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4 ½ feet above ground level may be removed in any ten (10) year period.

- (c) In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered or removed, except to provide for a footpath or other permitted uses as described in paragraphs (2) and (2) (a) above.
- (d) Pruning of branches on the bottom one third (1/3) of the tree is allowed.
- (e) In order to maintain a buffer strip of vegetation when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, such openings shall be replanted with native tree species unless existing new tree growth is present.

The provisions contained in paragraph (2) above shall not apply to those portions of public recreational facilities adjacent to public swimming areas. Cleared areas, however, shall be limited to the minimum area necessary.

- (3) At distances greater than one-hundred (100) feet, horizontal distance, from a great pond, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland, , there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, measured 4 ½ feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards, volume may be considered to be equivalent to basal area.
- (4) In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. This provision shall not apply to the General Development Shoreland Zone.
- (5) Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of this section.
- (6) Cleared openings legally in existence on the effective date of this Ordinance may be maintained, but shall not be enlarged, except as permitted by this Ordinance.

N. Erosion and Sedimentation Control

- (1) All activities that involve filling, grading, excavating or other similar activities that result in unstabilized soil conditions, and which require a permit according to the Shoreland Zoning Section of this Ordinance, shall require a written soil erosion and sedimentation control plan. The plan shall be submitted to the City Code Enforcement Officer for approval, and shall include, where applicable, provisions for:
 - (a) Mulching and revegetation of disturbed soil,
 - (b) Temporary runoff control features such as hay bales, silt fencing or diversion ditches,
 - (c) Permanent stabilization structures, such as retaining walls or riprap.
- (2) In order to minimize the potential for erosion, a development shall be designed to fit with the topography and soils of the site. Development shall be avoided, whenever possible, on steep slopes, where high cuts and fills might be required.
- (3) Erosion and sedimentation control measures shall be in operation during all stages of the filling, grading, excavation or other similar activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
- (4) Exposed ground area shall be stabilized by use of riprap, sod, seed, and mulch, or similar measures, within one (1) week from the time it was last actively worked.

In all cases, permanent stabilization shall occur within nine (9) months of the initial date of exposure.

In addition:

- (a) Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet of exposed area and shall be maintained until vegetation is established.
 - (b) Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
 - (c) Additional measures, such as the use of staked hay bales and/or silt fences, shall be taken where necessary in order to avoid siltation into the water.
- (5) Natural and man-made drainageways and drainage outlets shall be protected from erosion and shall be stabilized with vegetation or lined with riprap. Drainageways shall be designed and constructed in order to carry water from a twenty-five (25) year storm or greater.
- O. Soils. All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and similar intensive land uses, shall require a soils report based on an on-site investigation. This report shall be prepared by a state-certified professional, such as a Maine Certified Soil Scientist, Maine Registered Professional Engineer, or Maine State Certified Geologist. It shall be based upon analysis of the characteristics of the soil and surrounding land and water areas, maximum ground water elevation, presence of ledge, drainage conditions, and other pertinent data, including recommendations to counteract soil limitation.
- P. Water Quality. No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the waste classification of the water body, tributary stream or wetland.
- Q. Archaeological and Historic Sites. Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on, the National Register of Historic Places, as determined by the permitting authority shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comments at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

401.8 **Definitions**

Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law, and shall be defined to give this Ordinance its most reasonable application. Where definitions in this Ordinance conflict with other definitions in the Westbrook Zoning Ordinance, the definitions in this Ordinance shall take precedence within the shoreland protection zone.

Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word “may” is permissive; “shall” is mandatory and not discretionary.

- 401.8.1 **Accessory structure or use.** A use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure.
- 401.8.2 **Agriculture.** The production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and green house products. Agriculture does not include forest management and timber harvesting activities.
- 401.8.3 **Aggrieved Party.** An owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.
- 401.8.4 **Aquaculture.** The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.
- 401.8.5 **Basal Area.** The area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.
- 401.8.6 **Basement** - any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.
- 401.8.7 **Boat Launching Facility.** A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.
- 401.8.8 **Campground.** Any area or tract of land to accommodate two (2) or more parties in temporary living quarters, including, but not limited to tents, recreational vehicles or other shelters.
- 401.8.9 **Canopy.** The more or less continuous cover formed by tree crowns in a wooded area.

- 401.8.10 **Commercial Use.** The use of lands, buildings, or structures, other than a "home occupation," defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.
- 401.8.11 **Dimensional Requirements.** Numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.
- 401.8.12 **Disability.** Any disability, infirmity, malformation, disfigurement, congenital defect or mental condition caused by bodily injury, accident, disease, birth defect, environmental conditions or illness; and also includes the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist, as well as any other health or sensory impairment which requires special education, vocational rehabilitation or related services.
- 401.8.13 **Driveway.** A vehicular access-way less than five hundred (500) feet in length serving two lots or less.
- 401.8.14 **Emergency Operations.** Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.
- 401.8.15 **Essential Services.** Gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.
- 401.8.16 **Expansion of a Structure.** An increase in the floor area or volume of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses.
- 401.8.17 **Expansion of Use.** The addition of one or more months to a use's operating season; or the use of more floor area or ground area devoted to a particular use.
- 401.8.18 **Family.** One or more persons occupying a premises and living as a single housekeeping unit.
- 401.8.19 **Floodway.** The channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height.

401.8.20 **Floor Area.** The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks.

401.8.21 **Forest Management Activities.** Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads.

401.8.22 **Forested Wetland.** A freshwater wetland dominated by woody vegetation that is six (6) meters tall or taller.

401.8.23 **Foundation.** The supporting substructure of a building or other structure, excluding wooden sills and post supports but including basements, slabs, frostwalls, or other base consisting of concrete, block, brick or similar material.

401.8.24 **Freshwater Wetland.** Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

1. Often or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and
2. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

401.8.25 **Functionally Water-Dependent Uses.** Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that can not be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, excluding recreational boat storage buildings, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters.

401.8.26 **Great Pond.** Any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner,

- 401.8.27 **Great pond classified GPA.** Any great pond classified GPA, pursuant to Title 38 Article 4-A Section 465-A. This classification includes some, but not all impoundments of rivers that are defined as great ponds.
- 401.8.28 **Height of a Structure.** The vertical distance between the mean original grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, and similar appurtenances which have no floor area.
- 401.8.29 **Home Occupation.** An occupation or profession which is customarily conducted on or in a residential structure or property and which is 1) clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and 2) which employs no more than two (2) persons other than family members residing in the home.
- 401.8.30 **Increase in Nonconformity of a Structure.** Any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body or wetland than the closest portion of the existing structure from that water body or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.
- 401.8.31 **Individual Private Campsite.** An area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and which involves site improvements which may include but not be limited to gravel pads, parking areas, fire places, or tent platforms.
- 401.8.32 **Industrial.** The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.
- 401.8.33 **Lot Area.** The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.
- 401.8.34 **Marina.** A business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, boat and tackle shops and marine fuel service facilities.

- 401.8.35 **Market Value.** The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.
- 401.8.36 **Mineral Exploration.** Hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.
- 401.8.37 **Mineral Extraction.** Any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.
- 401.8.38 **Minimum Lot Width.** The closest distance between the side lot lines of a lot.
- 401.8.39 **Multi-Unit Residential.** A residential structure containing three (3) or more residential dwelling units.
- 401.8.40 **Non-Conforming Lot.** A single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area, frontage, or width requirements of the district in which it is located.
- 401.8.41 **Non-Conforming Structure.** A structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.
- 401.8.42 **Non-Conforming Use.** Use of buildings, structures, premises, land or parts thereof which is not permitted in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.
- 401.8.43 **Normal High-Water Line.** That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high water are considered part of the river or great pond.
- 401.8.44 **Person.** An individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.
- 401.8.45 **Piers, Docks, Wharves, Bridges and Other structures and Uses Extending Over or Beyond the Normal High-Water Line or Within a Wetland.**

Temporary: Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.

Permanent: Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

401.8.46 **Principal Structure.** A building other than one which is used for purposes wholly incidental or accessory to the use of another building or use on the same premises.

401.8.47 **Principal Use.** A use other than one which is wholly incidental or accessory to another use on the same premises.

401.8.48 **Public, Facility.** Any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

401.8.49 **Recent Flood Plain Soils.** The following soil series as described and identified by the National Cooperative Soil Survey:

| | | |
|----------|---------|----------|
| Fryeburg | Haley | Limerick |
| Lovewell | Medomak | Ondawa |
| Alluvial | Cornish | Charles |
| Podunk | Rumney | Saco |
| Suncook | Sunday | Winooski |

401.8.50 **Recreational Facility.** A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

401.8.51 **Recreational Vehicle.** A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

401.8.52 **Replacement System.** A system intended to replace: 1.) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure, or 2.) any existing overboard wastewater discharge.

401.8.53 **Residual Basal Area.** The sum of the basal area of trees remaining on a harvested site.

401.8.54 **Residential Dwelling Unit.** A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes, and rental units that contain cooking, sleeping and toilet facilities regardless of the time period rented, but not recreational vehicles.

401.8.55 **Riprap.** Rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

401.8.56 **River.** A free-flowing body of water including its associated flood plain wetlands from that point at which it provides drainage for a watershed of twenty five (25) square miles to its mouth.

401.8.57 **Road.** A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles.

401.8.58 **Service Drop.** Any utility line extension which does not cross or run beneath any portion of a water body provided that:

1. in the case of electric service
 - a. the placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
 - b. the total length of the extension is less than one thousand (1,000) feet.
2. in the case of telephone service
 - a. the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or
 - b. the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

401.8.59 **Setback.** The nearest horizontal distance from the normal high-water line to the nearest part of a structure, road, parking space or other regulated object or area.

401.8.60 **Shore Frontage.** The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

401.8.61 **Shoreland Zone.** The land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond, river, or saltwater body; within 250 feet of the upland edge of a coastal or freshwater wetland; or within seventy-five (75) feet of the normal high-water line of a stream.

401.8.62 **Significant River Segments.** See Title 38 MRSA Sec. 437.

401.8.63 **Stream.** A free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available,

a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

401.8.64 **Structure.** Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences. The term includes structures temporarily or permanently located, such as decks, patios and satellite dishes.

401.8.65 **Substantial Start.** Completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost.

401.8.66 **Subsurface Sewage Disposal System.** A collection of treatment tank(s), disposal area(s), holding tank(s) and pond(s), surface spray system(s), cesspool(s), well(s), surface ditch(es), alternative toilet(s), or other devices and associated piping designed to function as a unit for the purpose of disposing of wastes or wastewater on or beneath the surface of the earth. The term shall not include any wastewater discharge system licensed under 38 MRSA Section 414, any surface wastewater disposal system licensed under 38 MRSA Section 413 Subsection 1-A, or any public sewer. The term shall not include a wastewater disposal system designed to treat wastewater which is in whole or in part hazardous waste as defined in 38 MRSA Chapter 13, subchapter 1.

401.8.67 **Sustained Slope.** A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

401.8.68 **Timber Harvesting.** The cutting and removal of trees from their growing site, and the attendant operation of cutting and skidding machinery but not the construction or creation of roads. Timber harvesting does not include the clearing of land for approved construction.

401.8.69 **Tributary Stream.** A channel between defined banks created by the action of surface water, whether intermittent or perennial, and which is characterized by the lack of upland vegetation or presence of aquatic vegetation and by the presence of a bed devoid of topsoil containing waterborne deposits on exposed soil, parent material or bedrock, and which flows to a water body or wetland as defined. This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland.

401.8.70 **Upland Edge.** The boundary between upland and wetland.

401.8.71 **Vegetation.** All live trees, shrubs, ground cover, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 1/2 above ground level.

401.8.72 **Volume of a Structure.** The volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof.

401.8.73 **Water body.** Any great pond, river, stream or tidal area.

401.8.74 **Water Crossing.** Any project extending from one bank to the opposite bank of a river or stream, whether under, through, or over the water course. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings.

401.8.75 **Wetland.** A freshwater or coastal wetland.

(Ord. of 12-13-04; 6-1-09)

402 Flood Plain Zone

- 402.1 **Purpose and Establishment.** Areas of the city are subject to periodic flooding that cause serious damage to properties. Relief is available in the form of flood insurance, as authorized by the National Flood Insurance Act of 1968.

The City has chosen to become a participating community in the National Flood Insurance Program, and has agreed to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as set forth in this Floodplain Management Ordinance.

By adopting this Ordinance, the City intends to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

The City has the legal authority to adopt land use and flood control measures to reduce future flood losses pursuant to Title 30-A M.R.S.A., Sections 3001-3007, 4352 and 4401-4407.

The National Flood Insurance Program, established in the aforesaid Act, provides that those areas of the city having a special flood hazard be identified by the Federal Emergency Management Agency, and that floodplain management measures be applied in such areas. This Ordinance establishes a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the City of Westbrook, Maine.

The areas of special flood hazard, Zones A and A1-30, are identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study – City of Westbrook, Maine, Cumberland County," dated July, 1980, with accompanying "Flood Insurance Rate Map" dated January 2, 1981, and "Flood Boundary and Floodway Map," dated January 2, 1981, which are hereby adopted by reference and declared to be a part of this Ordinance.

- 402.2 **Permit Required.** Before any construction or other development (as defined in section 402.13 of this Ordinance), including the placement of manufactured homes, begins within any areas of special flood hazard established in section 402.1 of this Ordinance, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer. This permit shall be in addition to any other permits that may be required pursuant to the codes and ordinances of the City of Westbrook.

- 402.3 **Application for Permit.** The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer, and shall include:

A. The name, address and phone number of the applicant, owner, and contractor,

- B. An address and a map indicating the location of the construction site,
- C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions,
- D. A statement of the intended use of the structure and/or development,
- E. A statement of the cost of the development, including all materials and labor,
- F. A statement as to the type of sewage system proposed,
- G. Specification of dimensions of the proposed structure and/or development,

(Items H-K(2), below, apply to only new construction and substantial improvements.)

H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), or to a locally established datum in Zone A only, of the:

- (1) Base flood at the proposed site of all new or substantially improved structures, which is determined:
 - (a) In zones A1-30, from data contained in the “Flood Insurance Study – City of Westbrook, Maine,” as described in Section 402.1 of this Ordinance, or
 - (b) In zone A:
 - (i) From any base flood elevation data from federal, state, or other technical sources (such as FEMA’s Quick – 2 model, FEMA 265/July 1995), including information obtained pursuant to Section 402.6.K. and Section 402.3.D. of this Ordinance.
 - (ii) From the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Registered Land Surveyor in the State of Maine or Professional Engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or in the absence of all other data,
 - (iii) To be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
- (2) Highest and lowest grades at the site adjacent to the walls of the proposed building,

- (3) Lowest floor, including basement; and whether or not such structures contain a basement, and,
- (4) Level, in the case of non-residential structures only, to which the structure will be floodproofed.
- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply, as required in Section 402.6 of this Ordinance,
- J. A written certification by a Registered Land Surveyor in the State of Maine, Professional Engineer or Architect, that the base flood elevation and grade elevations shown on the application are accurate,
- K. The following certifications as required in Section 402.6 by a Professional Engineer or Architect:
 - 1. A Floodproofing Certificate (FEMA Form 81-65, 08/99, as amended) to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Section 402.3.H.(4).; Section 402.6.G.; and other applicable standards in Section 402.6 of this Ordinance,
 - 2. A Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Section 402.6.L.(2).(a).,
 - 3. A certified statement that bridges will meet the standards of Section 402.6.M. of this Ordinance,
 - 4. A certified statement that containment walls will meet the standards of Section 402.6.N. of this Ordinance.
- L. A description of the extent to which any water course will be altered or relocated as a result of the development, and,
- M. A statement of construction plans describing in detail how each applicable development standard in Section 402.6 of this Ordinance will be met.

402.4 Application Fee and Expert's Fee. A non-refundable application fee of \$50.00 shall be paid to the Code Enforcement Officer, and a copy of a receipt shall accompany the application.

An additional fee may be charged if the Code Enforcement Officer needs the assistance of a Professional Engineer, registered in the State of Maine, or other expert. Applicant shall pay the expert's fee in full within ten (10) days after the City submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the Ordinance and be grounds for the issuance of a stop work order.

An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or has been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

402.5 Review Standards for Flood Hazard Development Permit Applications. The Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to ensure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Section 402.6 of this Ordinance have been, or will be, met,
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
 - (1) The base flood data contained in the "Flood Insurance Study - City of Westbrook, Maine," as described in Section 402.1 of this Ordinance,
 - (2) In special flood hazard areas where base flood elevation data are not provided, the Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Section 402.3.H.(l).(b).; Section 402.6.K.; and Section 402.8.D., in order to administer Chapter IV of this Ordinance, and,
 - (3) When the community establishes a base flood elevation in a Zone A by methods outlined in Section 402.3.H.(l).(b)., the community shall submit that data to the Maine Floodplain Management Program in the State Planning Office.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Section 402.1 of this Ordinance,
- D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334,

- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program in the State Planning Office prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency,
- F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits based on the type of development:
- (1) A two part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure up to, and including, the first horizontal floor only above the base flood level. At that time, the applicant shall provide the Code Enforcement Officer with a Elevation Certificate completed by a Professional Land Surveyor, Professional Engineer, registered in the State of Maine, or Architect based on the Part I permit construction, "as built", for verifying compliance with the elevation requirements of Section 402.6, paragraphs F, G, or H. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application, the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project, or,
 - (2) A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Section 402.6.G.(l).(a).(b). and (c) of this Ordinance. The application for this permit shall include a Floodproofing Certificate signed by a registered Professional Engineer, registered in the State of Maine, or Architect, or
 - (3) A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Section 402.6.J. of this Ordinance, mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves and piers.
- G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding permits issued, and data relevant thereto. This includes reports of the Board of Appeals on variances granted under the provisions of Section 402.9 this Ordinance, and copies of Elevation Certificates, Floodproofing

Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Sections 402.3, 402.6, and 402.7 of this Ordinance.

402.6 Development Standards. All developments in areas of special flood hazard shall meet the following applicable standards:

A. All Development. All development shall:

- (1) Be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy,
- (2) Use construction materials that are resistant to flood damage,
- (3) Use construction methods and practices that will minimize flood damage, and
- (4) Use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flood conditions.

B. Water Supply. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

C. Sanitary Sewage Systems. All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.

D. On-Site Waste Disposal Systems. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.

E. Watercourse Carrying Capacity. All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.

F. Residential. New construction or substantial improvement of any residential structure located within:

- (1) Zones AI-30 shall have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation.

- (2) Zone A shall have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation utilizing information obtained pursuant to Section 402.3.H.(1).(b).; Section 402.5.B.; or Section 402.8.D. of this Ordinance.

G. Non Residential. New construction or substantial improvement of any non-residential structure located within:

- (1) Zones A1-30 shall have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:

- (a) Be floodproofed to at least one (1) foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water,
- (b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy, and,
- (c) Be certified by a Professional Engineer, registered in the State of Maine, or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Section 402.3.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.

- (2) Zone A shall have the lowest floor (including basement) elevated to at least one (1) foot above the base flood elevation utilizing information obtained pursuant to Section 402.3.H.(1).(b).; Section 402.5.B.; or Section 402.8.D. of this Ordinance, together with attendant utility and sanitary facilities meet the floodproofing standards of Section 402.6.G.(1). of this Ordinance.

H. Manufactured Homes. New or substantially improved manufactured homes located within:

- (1) Zones A1-30 shall:

- (a) Be elevated such that the lowest floor (including basement) of the manufactured home is at least one (1) foot above the base flood elevation,
- (b) Be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles, and,
- (c) Be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:

- (i) Over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side),
- (ii) Frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side),
- (iii) All components of the anchoring system, as described in Section 402.6.H.(1).(c).(i)&(ii) of this Ordinance, shall be capable of carrying a force of 4800 pounds.

(2) Zone A shall:

- (a) Be elevated on a permanent foundation, as described in Section 402.6.H.(1).(b). of this Ordinance, such that the lowest floor (including basement) of the manufactured home is at least one (1) foot above the base flood elevation utilizing information obtained pursuant to Section 402.3.H.(1).(b).; Section 402.5.B; or Section 402.8.D. of this Ordinance, and
- (b) Meet the anchoring requirements of Section 402.6.H.(1).(c). of this Ordinance.

I. Recreational Vehicles. Recreational Vehicles located within:

(1) Zones A1-30 shall either:

- (a) Be on the site for fewer than 180 consecutive days,
- (b) Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions, or,
- (c) Be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Section 402.6.H.(1). of this Ordinance.

J. Accessory Structures. Accessory Structures, as defined in Section 402.13 of this Ordinance, located within Zones A1-30 and A, are exempt from the elevation criteria of Section 402.6.F. & G. of this Ordinance, if all the other requirements of Section 402.6 of this Ordinance and the following are met.

- (1) Are 500 square feet or less and have a value less than \$3,000,
- (2) Have unfinished interiors and not be used for human habitation,
- (3) Have hydraulic openings, as specified in Section 402.6.L.(2). of this Ordinance, in at least two different walls of the accessory structure,
- (4) Are located outside the floodway,

- (5) When possible are constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed farther from the source of flooding than the primary structure, and
- (6) Contain only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

K. Floodways:

- (1) In Zones A1-30, riverine areas, encroachments and development including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway that is designated on the City's Flood Boundary and Floodway Map, unless a technical evaluation, certified by a Professional Engineer, registered in the State of Maine, is provided. This evaluation shall demonstrate that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- (2) In Zones A1-30 and A, riverine areas for which no regulatory floodway is designated, encroachments and other development including fill, new construction, and substantial improvement shall not be permitted in the floodway, as determined in section 402.6.K.(3). of this Ordinance, unless a technical evaluation certified, by a Professional Engineer, registered in the State of Maine, is provided. This evaluation shall demonstrate that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:
 - (a) Will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community, and,
 - (b) Is consistent with the technical criteria contained in Chapter 5 entitled "Hydraulic Analyses," *Flood Insurance Study - Guidelines and Specifications for Study Contractors*, (FEMA 37/ January 1995, as amended).
- (3) In Zones A1-30 and A, riverine areas for which no regulatory floodway is designated, the regulatory floodway is the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

- L. Enclosed Areas Below the Lowest Floor. New construction or substantial improvement of any structure in Zones A1-30 and A that meets the development standards of Section 402.6 of this Ordinance, including the elevation requirements of Section 402.6, paragraphs F, G, or H of this Ordinance and is elevated on posts,

columns, piers, piles, "stilts," or crawlspaces may be enclosed below the base flood elevation requirements, provided all the following criteria are met or exceeded:

- (1) Enclosed areas are not "basements" as defined in Section 402.13 of this Ordinance,
- (2) Enclosed areas are designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
 - (a) Be engineered and certified by a Professional Engineer, registered in the State of Maine, or Architect, or
 - (b) Meet or exceed the following minimum criteria:
 - (i) Contain a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area,
 - (ii) The bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade,
 - (iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control, such as human intervention, including the use of electrical and other non-automatic mechanical means.
- (3) The enclosed area shall not be used for human habitation, and
- (4) The enclosed areas are usable solely for building access, parking of vehicles, or storage.

M. Bridges. New construction or substantial improvement of any bridge in Zones A1-30 and A shall be designed such that:

- (1) When possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation, and
- (2) A Professional Engineer, registered in the State of Maine, certifies that:
 - (a) The structural design and methods of construction meet the elevation requirements of this section and the floodway standards of Section 402.6.K. of this Ordinance, and
 - (b) The foundation and attached superstructure are designed to resist flotation, collapse and lateral movement, due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

N. Containment Walls. New construction or substantial improvement of any containment wall located within Zones A1-30 and A shall:

- (1) Elevate the containment wall to at least one (1) foot above the base flood elevation,
- (2) Contain structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy,
- (3) Be certified by a Professional Engineer, registered in the State of Maine, or Architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Section 402.3.K. of this Ordinance.

O. Wharves, Piers and Docks. New construction or substantial improvement of wharves, piers, and docks is permitted in Zones A1-30 and A, in and over water and seaward of the mean high tide if the following requirements are met:

- (1) Wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and
- (2) For commercial wharves, piers, and docks, a Professional Engineer, registered in the State of Maine, shall develop or review the structural design, specifications, and plans for the construction.

402.7 **Certificate of Compliance.** No land in a special flood hazard area shall be occupied or used and no structure which has been constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer, subject to the following provisions:

- A. For New Construction or Substantial Improvement of any elevated structure, the applicant must submit to the Code Enforcement Officer, an Elevation Certificate completed by a Registered Land Surveyor, Professional Engineer, registered in the State of Maine, or Architect, for compliance with Section 402.6, paragraphs F., G., or H. of this Ordinance.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this Ordinance.
- C. The Code Enforcement Officer, within 10 working days of the receipt of the above information, shall:
 - (1) Review the Elevation Certificate and the applicant's written notification, and

- (2) Upon determination that the development conforms with the provisions of this Ordinance, shall issue a Certificate of Compliance.

402.8 **Review of Subdivision and Development Proposals.** The Planning Board shall assure the following when reviewing subdivisions and developments requiring review under federal, state, or local law, and all projects on five (5) or more disturbed acres, or manufactured home parks divided into two or more lots:

- A. The proposal is consistent with the need to minimize flood damage,
- B. Public utilities and facilities, such as sewer, gas, electrical and water systems, are located and constructed to minimize or eliminate flood damage,
- C. Adequate drainage is provided so as to reduce exposure to flood hazards,
- D. Applications include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency,
- E. Development plan must include a “condition of plan approval” requiring that structures on any lot in the development, having any portion of its land within a Special Flood Hazard Area, be constructed in accordance with Section 402.6 of this Ordinance. Such requirement shall be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to, a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement; and that fact shall also be included in the deed or any other document previously described. The condition of plan approval shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

402.9 **Appeals and Variances.** The Board of Appeals of the City of Westbrook may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer in the administration of the provisions of this Ordinance.

The Board of Appeals may grant a variance from the requirements of this Ordinance, consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result,

B. Variances shall be granted only upon:

- (1) A showing of good and sufficient cause, and,
- (2) A determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, create nuisances, cause fraud or victimization of the public, conflict with existing local laws or ordinances,
- (3) A showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances,
- (4) A determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
 - (a) That the land in question cannot yield a reasonable return unless a variance is granted,
 - (b) That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood,
 - (c) That the granting of a variance will not alter the essential character of the locality,
 - (d) That the hardship is not the result of action taken by the applicant or a prior owner.

C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. The Board of Appeals may impose conditions to a variance as it deems necessary.

D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:

- (1) Other criteria of Section 402.9 and Section 402.6.K. of this Ordinance are met,
- (2) The structure or other development is protected by methods that minimize flood damages during the base flood, and create no additional threats to public safety.

E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:

- (1) The development meets the criteria of Section 402.9, paragraphs A. through D. above,

- (2) The proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure, and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Any applicant who meets the criteria of Section 402.9, paragraphs A. through E. of this Ordinance shall be notified by the Board of Appeals in writing that:
 - (1) The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance, up to amounts as high as \$25 per \$100 of insurance coverage,
 - (2) Such construction below the base flood level increases risks to life and property,
 - (3) The applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.
- G. Procedure for Administrative Appeals. Administrative appeals will follow the procedure defined in Chapter VII, Section 703 of the City of Westbrook Zoning Ordinance.

402.10 Enforcement and Penalties.

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A M.R.S.A. § 4452,
- B. The penalties contained in Title 30-A M.R.S.A. § 4452 shall apply to any violation of this Ordinance.
- C. Upon determination that a violation exists, the Code Enforcement Officer, in addition to any other actions, shall submit a declaration to the Administrator of the Federal Insurance Administration requesting a denial of flood insurance. The declaration shall consist of:
 - (1) The name of the property owner and address or legal description of the property sufficient to confirm its identity or location,

- (2) A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance,
- (3) A clear statement that the public body making the declaration has authority to do so and a citation to that authority,
- (4) Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance,
- (5) A clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

402.11 **Validity and Severability.** If any section or provision of this Ordinance is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

402.12 **Conflict with Other Ordinances.** This Ordinance shall not in any way impair or remove the need for compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall control.

402.13 **Definitions.** Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law, and shall be defined to give this Ordinance its most reasonable application. Where definitions in this Ordinance conflict with other definitions in the Westbrook Zoning Ordinance, the definitions in this Ordinance shall take precedence within flood plain zones.

Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

402.13.1 **Accessory Structure.** A small detached structure that is incidental and subordinate to the principal structure.

402.13.2 **Adjacent Grade.** The natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

402.13.3 **Area of Special Flood Hazard.** The land in the floodplain having a one (1) percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Section 402.1 of this Ordinance.

402.13.4 **Base Flood.** The flood having a one (1) percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

402.13.5 **Basement.** Any area of the building having its floor subgrade (below ground level) on all sides.

402.13.6 **Building.** See Structure.

402.13.7 **Certificate of Compliance.** A document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

402.13.8 **Code Enforcement Officer.** Any person or board responsible for performing the inspection, licensing, and enforcement duties required by a particular statute or ordinance.

402.13.9 **Development.** Any change caused by individuals or entities to improved or unimproved real estate, including but not limited to the construction of buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials, public or private sewage disposal systems or water supply facilities.

402.13.10 **Elevated Building.** A non-basement building

A. In Zones A1-30 or A, buildings constructed to have the top of the elevated floor elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and

B. Adequately anchored so as not to impair the structural integrity of the building during a flood of up to one (1) foot above the magnitude of the base flood.

In Zones A1-30 or A, Elevated Building also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in section 402.6.L. of this Ordinance.

402.13.11 **Elevation Certificate.** An official form (FEMA Form 81-31, 07/00, as amended) that is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program, and is required for purchasing flood insurance.

402.13.12 **Flood or Flooding:**

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters,

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

- B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or water currents exceeding anticipated cyclical levels; or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraphs A. (1) and (2) of this definition.

402.13.13 **Flood Elevation Study.** An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

402.13.14 **Flood Insurance Rate Map (FIRM).** An official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

402.13.15 **Flood Insurance Study.** See Flood Elevation Study.

402.13.16 **Floodplain or Flood-prone Area.** Any land area susceptible to being inundated by water from any source (see flooding).

402.13.17 **Floodplain Management.** The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

402.13.18 **Floodplain Management Regulations.** Zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of the police power. The term describes state or local regulations, which provide standards for the purpose of flood damage prevention and reduction.

402.13.19 **Floodproofing.** Any combination of structural and non-structural additions or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.

402.13.20 **Floodway.** See Regulatory Floodway.

402.13.21 **Floodway Encroachment Lines.** The lines marking the limits of floodways on federal, state, and local floodplain maps.

402.13.22 **Freeboard.** A factor of safety, usually expressed in feet above a flood level, for purposes of floodplain management. Freeboard compensates for unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

402.13.23 **Functionally Dependent Use.** A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only

docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

402.13.24 **Historic Structure.** Any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register,
- B. Certified, or preliminarily determined by the Secretary of the Interior, as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district,
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior, or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program, as determined by the Secretary of the Interior, or
 - (2) Directly by the Secretary of the Interior, in states without approved programs.

402.13.25 **Locally Established Datum.** An elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

402.13.26 **Lowest Floor.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for vehicle parking, building access or storage in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in section 402.6.L. of this Ordinance.

402.13.27 **Manufactured Home.** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

402.13.28 **Manufactured Home Park or Subdivision.** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

402.13.29 **Mean Sea Level.** For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, or other datum to which base flood elevations shown on a community's Flood Insurance Rate map are referenced.

402.13.30 **Minor Development.** All development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Section 402.6.J. of this Ordinance, mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

402.13.31 **National Geodetic Vertical Datum (NGVD).** The national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon mean sea level in 1929, and also has been called "1929 Mean Sea Level (MSL)".

402.13.32 **New Construction.** Structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

402.13.33 **100-year flood.** See Base Flood.

402.13.34 **Recreational Vehicle.** A vehicle that is:

- A. Built on a single chassis,
- B. 400 square feet or less when measured at the largest horizontal projection, not including slideouts,
- C. Designed to be self-propelled or permanently towable by a motor vehicle, and
- D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

402.13.35 **Regulatory Floodway:**

- A. The channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot, and
- B. When not designated on the community's Flood Boundary and Floodway Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half (1/2) the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

- 402.13.36 **Riverine.** Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
- 402.13.37 **Special Flood Hazard Area.** See Area of Special Flood Hazard.
- 402.13.38 **Start of Construction.** The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the excavation stage; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.
- 402.13.39 **Structure.** For floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.
- 402.13.40 **Substantial Damage.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- 402.13.41 **Substantial Improvement.** Any reconstruction, rehabilitation, addition to, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term, however, does not include either:
- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
 - B. Any alteration of a Historic Structure, provided that the alteration does not preclude the structure's continued designation as a historic structure, and provided that a variance is obtained from the Board of Appeals.
- 402.13.42 **Variance.** A grant of relief by the Board of Appeals from the terms of a floodplain management regulation.

402.13.43 **Violation.** The failure of a structure or development to comply with a community's floodplain management regulations.

402.14 **Abrogation.** This Ordinance repeals and replaces any floodplain ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

(Ord. of 12-13-04)

403 Village Review Overlay Zone

403.1 Purpose. The Westbrook Comprehensive Plan calls attention to both national and local historic district properties. A survey by Greater Portland Landmarks identified potential national historic districts and four local districts. The Village Review Overlay Zone, corresponding to these areas, will provide architectural guidance to property owners within the zone. No change, as determined through the criteria of Section 403.5, to the exterior of an existing building, no addition to an existing building, or any new construction shall occur in the Village Review Overlay Zone without the approval of either City Staff or the Planning Board, as set forth in Section 403.8. The following criteria will guide owners in the maintenance of important architectural qualities of the property, or creating new ones that relate to surrounding properties.

403.2 Area of Zone. The area to be included in the Village Review Overlay Zone is depicted on the Westbrook Zoning Map.

403.4 General Factors. The following general factors shall be considered in the review of an application.

- A. The applicant shall incorporate the U.S. Secretary of Interior's Standards and Practices and Guidelines *for Preservation, Restoration or Reconstruction*, a copy of which is on file in the City Planner's Office, in the design.
- B. The distinguishing qualities, character or stylistic features of the structure must be preserved, including features which have taken on historic significance in their own right. All structures must be recognized as products of their own time.

Historic Significance is defined as being associated with events that have contributed to the formation and development of the City of Westbrook, or with the lives of people who have been important to the community, or with the lives of people who have made a contribution to the broader patterns of our common history.

- C. Any building, or any part or appurtenance thereof, including, but not limited to, walls, fences, light fixtures, steps, driveways, and parking areas may only be moved, constructed, reconstructed, or altered in a manner that will preserve their architectural and community significance. Where repair or replacement is considered, any new material used must be consistent with previous materials.

Architectural Significance is defined by whether or not a building or structure embodies distinctive characteristics of a type, period or method of construction, or represents the work of a master architect or builder, or possesses high artistic values.

403.5 **Criteria.**

A. Visual Factors. The following visual factors shall be considered in the review of an application.

- (1) Scale of the Building. The scale of the building depends on its overall size, its mass in relationship to the open space around it, and the size of its doors, windows, porches and balconies. The scale of a building, and its windows, doors, porches and balconies must be compatible with its site and the proportions of any existing features of the building, where applicable. In addition, the scale of a building must be compatible with adjacent properties and buildings in its neighborhood.
- (2) Height. Change in the building height can have a negative impact on how a street appears. While maintaining a particular height is not required, changes in height must be compatible with the streetscape, adjacent buildings and the neighborhood.
- (3) Rhythm of Front Facades. In reviewing any facade, the pattern of doors, windows and wall surface, their height and width, should be compatible with the neighboring structures.
- (4) Relationship of Facade Shapes and Materials. The relationship of the facade shapes and materials should be considered in relation to the structure's context within the neighborhood significance, as defined. In particular, the rhythm of shapes, pitch, and orientation to the street on which the structure fronts should be maintained. Facades shall not be significantly altered or interrupted without Staff or Planning Board review and approval.

Neighborhood Significance is defined as contributing to the creation of a physical setting that represents a period in time that is important to the evolution of the City. It is understood that the physical setting of a structure(s), which is comprised of buildings, landscape features and open space, and other natural and architectural features, is an important factor in creating a sense of history.

Examples of neighborhood significance are as follows:

- (1) A group of buildings that are similarly constructed and/or designed by a particular individual important in the City's history
- (2) A group of buildings that are of similar or significant architectural styles
- (3) A group of buildings whose location, layout on the property or size serves as an important element in the neighborhood.

403.6 **Demolition Approval.** In order to demolish or remove a building within the Village Review Zone, a property owner must first obtain a Certificate of Approval from the Planning Board. The Planning Board shall either grant the certificate or declare a 90-day moratorium from demolition. The purpose of the moratorium is to:

- A. Provide time to examine alternative ways to meet the owner's needs,
- B. Provide an opportunity to relocate, rather than demolish, the structure,
- C. Allow time to make a photographic survey of the structure for recording purposes.

If, at the end of the 90-day period no satisfactory alternative to demolition has been found, then the Planning Board shall authorize the Code Enforcement Officer to issue a Certificate of Approval to demolish the structure or relocate it.

403.7 Application Process. When a property owner desires to change the exterior appearance of a building, intends to build a new structure, or intends to add an addition to a building within the Village Review Overlay Zone, he/she shall file a permit with the Code Enforcement Officer. Changes include the installation of new or replacement siding, windows or other architectural features.

- A. Submission Requirements: The permit application must include the following information to describe the exterior changes or new construction:
 - (1) Elevations of all building facades that are to be affected and of proposed new construction or building additions,
 - (2) Photographs of the existing structure, where applicable,
 - (3) A description of the location of windows proposed for replacement and a description of the proposed replacement windows,
 - (3) A list and description of all materials proposed to be used, as applicable.

403.8 Review Process.

- A. Review process for de minimus changes to the exterior appearance of a building or an addition with a footprint equal to, or less than, 3,000 S.F. to an existing building. For the purposes of this ordinance, attached or detached garages shall be classified as building additions. Deminimus changes consist of changes to the exterior, such as installation of new windows, or the installation of new siding, or restorative alterations:
 - (1) Upon receipt of a complete application, the City Planner shall send notice of the application to all owners of property that abut the property on which the construction activity is proposed. Where applicable, owners of property directly across a public or private way shall also receive notification of the application's receipt. The notice shall include the following:
 - (a) Address of property,
 - (b) Name of applicant,
 - (c) Date that the complete application was received,
 - (d) General description of the work to be completed,

- (e) General description of the staff review process,
- (f) General description for public comment on the application,
- (g) Description of the appeal process to the administrative decision.

- (2) Applications shall be approved, approved with conditions or denied by the City Planner within thirty (30) days of the receipt of a complete application. The City Planner may consult with other appropriate City Staff and/or appropriate outside professionals. The City Planner shall review the application with the owner to make any changes to the plan that would make the proposal more consistent with the criteria described, above.

B. Review Process for new construction. New buildings or additions over 3,000 S.F. For the purposes of this ordinance, the addition of new floors to an existing building shall be calculated using the footprint of each proposed floor. This calculation includes both usable and unusable space within the proposed addition.

- (1) Applications shall be approved, approved with conditions or denied by the Planning Board within thirty (30) days of their receipt of a complete application. The Board shall review the application with the owner, and work with the owner to make any changes to the plan that would make the proposal more consistent with the criteria described, above. Where Site Plan Review is necessary, the Planning Board shall use the criteria of this overlay zone prior to any final action.

403.9 **Appeal.**

A. Changes to the exterior appearance of a building or an addition to an existing building. Within thirty (30) days of the City Planner's decision, the applicant or any other aggrieved party may appeal the decision of the City Planner to the Planning Board. The Planning Board may affirm, modify or reverse the decision of the City Planner using the review standards described in sections 403.4 and 403.5 of this Ordinance.

B. New Construction. Within thirty (30) days of the Planning Board's decision, the applicant, abutting landowner or aggrieved party may appeal the decision of the Board to the Superior Court.

403.10 **Fees.** Fees applicable in the Village Review Zone shall be determined by the City Council.

(Ord. of 01-08-07)

404 Sign Regulations

404.1 General Provisions.

- A. **Sign Restrictions.** A sign or advertising device of any nature may not be erected on or affixed to any building except as specifically permitted by Sections 404.2 - 404.7.
- B. **Computation of Area.** The area of a sign is determined by connecting the exterior points of the signboard or display elements, whichever is larger. It must include any open space between display elements. Each face of a sign shall be counted separately when determining the sign area. Display elements include letters, words, trademarks, medallions, symbols, and other devices intended to advertise or indicate the name of the premises, products or services available.(Ord. 8/21/06)

404.2 Signs in Residential Districts. The following provisions apply to signs in residential zoning districts:

- A. **Name of Occupant and Street Number.** One (1) sign is permitted displaying the name of the occupant of the premises, the street number, or both. A sign may not exceed one square foot in area for each visible face of the sign. It may have not more than two (2) faces. It may be attached to a building, or it may be erected on a rod or post not more than six (6) feet high and at least three (3) feet away from the street line. The sign may include the identification of an occupation. It may only relate to the person or services available on the premises.
- B. **Bulletin Board or Identification Sign.** One (1) bulletin board or identification sign for a permitted non-residential building or use, containing not more than six (6) square feet of signboard area. For churches, schools, and public institutions, two (2) bulletin boards of identification signs are permitted for each building. Each sign may contain not more than ten (10) square feet of signboard area. It must be set back at least one half (1/2) of the required front yard depth.
- C. **Rental Area.** On the premises of an apartment building or rental housing area, there may be one (1) identifying sign containing not more than six (6) square feet of signboard area.
- D. **Non-conforming Use.** On the premises of a non-conforming use or a use permitted by exception, there may be one (1) sign containing not more than ten (10) square feet of signboard area.
- E. **For Sale Signs.** One (1) "For Sale," "For Rent," or "For Lease" sign is permitted on the property, containing not more than six (6) square feet of signboard area and

advertising only the premises on which the sign is located. Where the property fronts on two streets, one (1) sign is permitted facing each street.

F. Building Under Construction. On the premises of a building under construction or renovation, one (1) sign not exceeding five (5) square feet of signboard area is permitted per contractor, subcontractor, or architect actually employed on the premises. Total area of all signs shall not exceed thirty-two (32) square feet.

G. Subdivision Sign.

- (1) Temporary. A temporary sign is permitted to advertise a subdivision site while construction on the sale of the completed homes is under way. The sign may not contain more than twelve (12) square feet of signboard area.
- (2) Permanent. A permanent sign is permitted to identify a neighborhood that has been created as the result of a subdivision approved by the Planning Board. The sign may not enter the right-of-way, nor block safe sight distances along a road.

H. Business Signs.

- (1) On the premises of a business which is legally operating in a residential zoning district, other than those described in Section 404.2.A, there may be one (1) sign advertising that business containing an area of not more than sixteen (16) square feet. The sign must be attached to the building in which the business is situated.
 - a) Temporary. A sign erected under Section 404.2.H is temporary and does not become a non-conforming use. If this ordinance is amended so that such signs become illegal, the owner of the premises on which the sign is constructed must remove it or make it conform to the amended Ordinance.
 - b) Stationary. All signs or advertising devices must be permanently affixed to the structure. They may not contain any visible moving or movable parts except as described in Section 404.3.G below. The lighting of neon or other illuminated tube-type signs or advertising device is not allowed in residential districts.
- (2) Legal Non-conforming business. Legally existing non-conforming signs may continue to be used and may be repaired, but the Code Enforcement Officer must find that the sign is not otherwise altered, enlarged or relocated. Where the Code Enforcement Officer finds that such a sign is otherwise altered or relocated:
 - a) The Code Enforcement Officer may approve the alteration or relocation of a nonconforming free-standing sign so long as it is reduced in size by at least 25% of the original sign size. Where there are additional alterations or relocations beyond that there must be an additional reduction in size of at least 25% until such time as the sign size is no longer non-conforming.

- (b) The Code Enforcement Officer may approve the alteration or relocation of nonconforming building mounted signs so long as the sign area is reduced in size by at least 25% of the original sign area. This could be achieved through eliminating signs or reducing the overall size of building mounted signs. Where there are additional alterations or relocations beyond that there must be an additional reduction of at least 25% until such time as the sign size is no longer nonconforming.
- (c) Internally illuminated signs may only be turned on (illuminated) during hours when the business is open to the public and message boards may change not more than once every 24 hours.

(Ord. of 9-13-10)

404.3 **Signs in Highway Services District, Gateway Commercial District, Business/Professional Office District, Industrial Park Zoning District and Prides Corner Smart Growth Area.** The following provisions apply to signs in the Highway Services District, Gateway Commercial District, Industrial Park District and Business/Professional Office District: (Ord. of 03-07-05; 05-15-06; 06-22-09)

- A. Stationary. All signs or advertising devices must be permanently affixed to the real estate. They may only identify the occupant of the premises or advertise the article or services available on the premises on which they are situated.
- B. Number of Signs. Maximum Height. On each lot, not more than two (2) signs are permitted affixed to each exterior face of a building fronting on a public street or parking lot for each occupant. The topmost element of any sign may not be higher than ten (10) feet above the cornice line of the building. (Ord. of 6-22-09)
- C. Area of Sign. The total area of all signs permitted on the face of a building fronting on a public street or parking lot may not exceed one hundred (100) square feet for each twenty-five (25) feet of building frontage; except that in the Industrial Park District, the total area may not exceed two hundred (200) square feet. In the Business/Professional Office District the total area may not exceed the lesser of one hundred and fifty (150) square feet, or 5% of wall area on which the sign(s) is (are) to be placed. The total area of all signs for a property in the Highway Services District and for properties located in the Gateway Commercial District that are 40,000 square feet or less in land area shall not exceed five hundred (500) square feet and for properties of more than forty thousand (40,000) square feet of land area in the Gateway Commercial district shall not exceed five hundred (500) square feet for the first 40,000 square feet of land area plus one hundred (100) square feet for each additional forty thousand (40,000) square feet of land area. The total area of all signs for a property in the Industrial Park District shall not exceed three hundred (300) square feet. The total area of all signs for a property in the remaining districts

shall not exceed two hundred and fifty (250) square feet. (Ord. 01-26-06; 05-15-06; 6-22-09; 11-19-12)

- D. Free-Standing Signs. Where buildings are set back at least forty (40) feet, one (1) free-standing sign may be erected within the open space fronting upon a public street. The topmost element of a free-standing sign may be no more than twenty-five (25) feet above the average level of the ground between the supports of the sign. The sign must not obstruct the view of oncoming pedestrian or motor vehicle traffic.
- E. Divided Building. Where a building is divided by partitions and is occupied by separate entities, and where the building is constructed so that part of it is located within forty (40) feet of a public way and one or more of the entities within is entirely located at least forty (40) feet back from that way, there may be one (1) free-standing sign within the open space fronting upon the way. Only those entities located at least forty (40) feet back may utilize space on this sign.
- F. Area of Free-Standing Sign. A free-standing sign may have an area of not more than one hundred (100) square feet, except in the Business/Professional Office Districts where the area may not exceed fifty (50) feet for a single business and one hundred (100) square feet for multiple businesses on the same premises. Any exterior linear dimension of a free-standing sign may not exceed sixteen (16) feet. (Ord. 05-15-06; 08-21-06; 6-22-09)
- G. Illuminated Signs. Illuminated signs are permitted but they may not be intermittently illuminated or animated, with the exception of changeable electronic board signs in which the message changes at intervals of more than once every five (5) minutes and where the sign is a permanent component of the sign design and module. The total size of the changeable board area shall not exceed sixty (60) square feet.
- H. Informational Signs. Informational signs no larger than four (4) square feet, and containing no advertising are permitted on private property to direct traffic flow, indicate parking space, or provide other essential information to guide vehicular or pedestrian traffic flow with respect to that property.
- I. Materials. Signs can be made of multiple materials, except that:
 - (1) Plastic signs are not permitted in the Business/Professional Office District. In those districts, signs shall be constructed of natural materials, including, but not limited to, wood, stone, or composite material providing similar texture, except that, (Ord. 05/15/06; 6-22-09)
 - (a) Internally illuminated signs constructed of metal and plastic may be allowed in the City Center District and Business/Professional Office District to identify the major tenant of buildings with over three (3) floors, as measured from street level. The following standards apply:
 - (i) Only one (1) sign is permitted per façade,

- (ii) Only the building's largest tenant, or top-floor tenant may be identified by a sign,
- (iii) Signs may not be placed below the third (3rd) floor of the building,
- (iv) Signs may not be placed on facades facing a property line that directly abuts a residentially zoned property. (Ord. 01-23-06; 05-15-06)

J. Overhanging Signs. Signs may not overhang the public right-of-way.

K. Time and Temperature Signs. Time and temperature signs are permitted in these districts, but must be included in the total square footage allotment for the structure.

L. Sandwich Board Signs (Removed per Ord. of 6-22-09)

404.3.1 **Signs in the City Center District.** The following provisions apply to signs in the City Center District: (Ord. of 6-1-09; 6-22-09; 4-5-10)

Preamble to District

The purpose of the City Center Zoning District is to create a flexible atmosphere for the return of the downtown to a prominent regional service center. Flexible setbacks will be balanced with an overlay of design standards to encourage new development that will be consistent with the goals established in the City's Comprehensive Plan, Downtown Revitalization Plan, and Westbrook Riverfront Master Plan.

404.3.1.1 **General.**

- A. Purpose. The purpose of regulating signs is to promote and protect the public health, safety, and welfare by regulating existing and proposed outdoor advertising, outdoor advertising signs, and outdoor signs of all types; to protect property values; enhance and protect the physical appearance of the community; preserve the scenic and natural beauty, and provide a more enjoyable and pleasing community; to reduce sign or advertising distractions and obstructions that may contribute to traffic accidents; reduce hazards that may be caused by signs overhanging or projecting over public right of way; provide more open space, and curb the deterioration of natural beauty and the community environment.
- B. Traffic safety and illumination. No sign, whether new or existing, shall be permitted that causes a visual obstruction or a traffic, health or welfare hazard or results in a nuisance due to illumination, placement, display, or manner of construction.
 - 1. District setback requirements do not apply to signs. Any sign setback requirements shall be stated within this section.
 - 2. Signs shall be illuminated only by steady, stationary, shielded light sources directed solely on the sign without causing glare or by constant internal

illumination. Any light source shall be shielded such that bulbs are not directly visible from neighboring properties or public ways. (Ord. of 4-5-10)

3. In order to conserve energy and reduce light pollution, on property abutting residential development, illumination of signs shall be permitted only between the hours of 7:00 a.m. and 11:00 p.m., except that this time restriction shall not apply to the illuminated signs of emergency facilities and retail, commercial, and industrial establishments during such hours as the establishments are open to the general public.
 4. No sign, except traditional barber poles for licensed and operating barber shops, shall have visible moving parts, blinking, moving or glaring illumination, or any part consisting of pennants, ribbons, streamers, spinners or other similar devices.
- C. Business Signs. Business signs are allowed and shall be constructed, installed and maintained so as to ensure public safety. Such signs shall be clearly incidental, customary to, and commonly associated with and in the same site as the building or establishment to which it refers and shall be limited in subject matter to name, design, picture or trademark of the establishment. It shall not include any general commercial advertising materials unrelated to a principal business within the building. Signs not directly related to the business shall be prohibited. All such signs shall be appropriate in scale and appearance. Business signs on adjacent buildings located on the same parcel shall be of compatible design and character. Sign types and placement are further described herein.
- D. Sign Permits. Except as otherwise provided herein, no person shall erect, modify or move any signs visible from the public way without first obtaining a sign permit from the Code Enforcement Officer. All permit applications shall include a color drawing showing all dimensions, types of materials, wording, colors to be used, any proposed illumination and a visual depiction of where the sign would be located on the site.

For any sign proposed to be placed on (sandwich board sign only) or that shall extend into (blade and/or awning only) the public right-of-way a permit is required on an annual basis and shall be accompanied by proof of general liability insurance coverage in the amount of \$100,000.00/\$300,000.00 to protect the City of Westbrook from any and all liability for personal or property damage to the public by reason of the erection and maintenance of such sign on and into the public right-of-way and shall maintain such insurance as long as such sign exists on and into the public right-of-way.

A fee shall be assessed for the review and administration of all sign permits.

- E. Awning. *(Removed 4-5-10)*
- F. Sign Area Computation. Signs shall be measured from the outermost part of the sign, but not to include wall supports. Sign area includes borders or framing not required to affix a sign to a building. Sign area does not include the base for a

ground mounted monument sign or the supportive pole(s) of a pylon sign. A sign with a double signboard or display area shall be construed to be one sign for the purpose of this Ordinance.

- G. No sign shall extend above the roofline or parapet of the building on which it is placed.
- H. Street Number Signs. All buildings are required to display one (1) street number sign per exterior face of building fronting on a public street way or parking lot. Such sign may be no more than one and a half (1.5) square feet in size and must be located on the first floor façade area of a building or on a sign. Such sign shall not count toward the overall sign allowance.
- I. Temporary Signs. The following signs are allowed on a temporary basis as follows and shall be securely affixed to the ground during the time allowed.
 - 1. Real Estate Signs. One real estate sign of no more than eight (8) square feet is allowed per lot proposed for lease, sale, or rent. The subject sign must be placed on the lot proposed for lease, sale, or rent. Such sign must be moved within two (2) weeks after the transaction. Such sign may be freestanding or building mounted.
 - 2. New Business Sign. One sign is permitted for a new business. Such sign shall be of no more than fifteen (15) square feet and shall not remain on the premises more than thirty (30) days before and after the opening of such business. Such sign shall be building mounted.
 - 3. Construction Signs. One sign relating to construction projects for new or renovated buildings are allowed. Such sign shall be no more than thirty-two (32) square feet and may include the name of multiple contractors. Such sign shall be removed one (1) week after issuance of the Certificate of Occupancy. Such sign may be freestanding.
 - 4. Temporary Banners/Community Event Signs. As further described in this section, such signs may be allowed by approval of the Code Enforcement Officer and shall not be located in such a manner as to obstruct pedestrian or vehicular traffic.
- J. Nonconforming signs. Nonconforming signs shall be subject to the following provisions.
 - 1. Nonconforming signs may continue to exist, so long as the use remains the same, the business remains open to the public, and if the signs are maintained in a safe, neat and clean condition.
 - 2. Any nonconforming sign that is altered, relocated or replaced must be made to conform to the provisions of this subsection at the time of the alteration, relocation or replacement. Alteration could include a change in color, material,

illumination, wording, or of any component of the sign other than for basic maintenance to ensure a safe, neat and clean condition.

3. Any nonconforming sign that is in need of repair must be made to conform to the provisions of this subsection if the repair takes place on more than fifty (50) percent of the sign area, including sign supports.
- K. Removal of Signs. Any sign, along with its supports, which no longer advertises a bonafide business conducted, primary product sold, activity being conducted, or public notice, shall be taken down and removed by the owner, agent or person having beneficial use of the building or premises upon which such sign may be found within six (6) months after the activity has ceased, or if the removal has not occurred, within ten (10) days after written notification from the Code Enforcement Officer.
- L. Definitions. In addition to those provided within Section 201, the following definitions shall apply to this section.
1. Animated sign: Any sign that uses movement or change of lighting to depict action or create a special effect or scene that has the result or intent of distracting the eye.
 2. Commercial message: Any sign wording, logo, or other representation that, directly or indirectly, names, advertises or calls attention to a business, a primary product, service or other commercial activity.
 3. Temporary Banners/Community Events: Banners located in the public right-of-way intended to serve a community purpose or convey information of community-wide interest.
 4. Nonconforming sign: Any sign that was lawful prior to the adoption, amendment, or revision of this Ordinance but that does not conform to the current requirements of this Ordinance.
 5. Public way: Any way designed for vehicular or pedestrian use and is maintained with public funds.
 6. Sign: Any device, fixture, placard or structure that uses any color, form, graphic, illumination, symbol or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public.
 7. Visible: Capable of being seen without visual aid by a person of normal visual acuity.
 8. Window sign: Any sign, picture, symbol or combination thereof, designed to communicate information about an activity, business, commodity, event, sale or service, placed inside a window, and visible from the exterior of the window.

404.3.1.2 **Illumination.**

Lighting Methods Allowed: Individual internally lit characters; individual backlit characters or “halo” effect; gooseneck fixture; or incandescent spotlight fixture.

Lighting Types Allowed: LED; neon; or incandescent.

A lighting fixture that directly or indirectly illuminates a sign must be designed so that the light source itself is shielded from view and does not shine directly into the right-of-way or onto adjacent property under different ownership. This does not apply to signs illuminated using neon.

All lighting must be UL (Underwriters Laboratory) listed and stamped.

Energy efficiency should be considered a priority in sign design and lighting.

Signs may be illuminated from within if the only components illuminated are the characters and limited graphics used to convey the name of the business and its purpose and/or the street number. No other portion of the sign face may be illuminated. See section 404.3.1.2 for permitted materials. (Ord. of 4-5-10)

404.3.1.3 **Sign Types Allowed.**

A. Building Mounted. Building mounted signs include those that are painted or flush-mounted directly on an exterior building façade. Backlit characters and internally lit characters are considered flush mounted for the purpose of this Ordinance. The total area of all building mounted signs may not exceed 5% of the exterior wall facing a public way or parking lot on which the sign(s) is to be placed.

One sign is permitted per individually owned and operated business within the building based on the sign area allowed per this subsection.

If a pylon or monument sign is also proposed then only one building mounted sign may be allowed per side of building facing a public way or parking lot and such building mounted sign may not list multiple tenants.

- B. Ground Mounted Signs. Sign area for ground mounted signs shall be no more than eighteen (18) square feet including all tenant signage.
1. Monument Signs. Ground mounted monument signs are signs mounted to the ground by a solid (opaque) base structure made of wood (painted or varnished and weather treated), brick, or stone. Such sign shall be no taller than six (6) feet including the base.

2. Pylon Signs. Pylon signs are signs mounted to the ground by poles made of materials consistent with this section. Such sign shall be no taller than nine (9) feet including the base.
 3. Where both ground mounted and building mounted signs are proposed, the lighting method of the building mounted sign may be individually backlit characters or “halo” effect only.
- C. Blade. Blade signs are attached directly to the building and extend perpendicular from the building wall and generally extend more than ten (10) inches from the face of the wall. Blade signs may be no more than fifty (50) square feet in size, shall be placed no lower than ten (10) feet above the average grade beneath the sign, and shall be no higher than twenty (20) feet above the average grade beneath the sign. Blade signs shall not extend more than four (4) feet into a public right-of-way and shall not extend into the curb abutting a public street. Blade signs are allowed every twenty-five (25) feet of linear frontage on a freestanding building.
- B. Message Board. A message board sign is a sign attached to and associated with a freestanding (ground mounted or pylon) sign. Message board signs are allowed where freestanding signs are allowed and are calculated within the allowable sign area for the proposed freestanding sign. Such signs shall be no taller than twelve (12) inches including framing and shall include no more than two (2) lines of text. Such sign may include a changeable message but the message may not change more than once every five (5) minutes. The time and temperature may be posted and are part of the maximum allowable sign area of the message board.
- C. Sandwich Board Signs. One (1) small A-frame sandwich board sign is allowed per twenty-five (25) feet of linear building frontage on Main Street or Bridge Street. Such sign shall not count toward the number of signs allowed per exterior face of building. Such signs are allowed when there is at least four (4) feet of clear travel space on a public sidewalk. Sandwich board signs may be no more than eight (8) square feet in size and shall not extend into the four (4) feet of clear travel space. Such signs may have writing on both sides, may not be illuminated, shall have no moving parts, must be placed adjacent to the business which it supports, and shall not block pedestrian movement along a sidewalk or vehicular visibility. Such signs shall face on-coming sidewalk traffic and not the street. In the event that these provisions are violated or in the event of inclement weather, the Code Enforcement Officer may have such signs removed from the public way. Sandwich board signs shall be temporary in nature and shall advertise temporary events.
- D. Entry Point Tenant Listing Sign. One (1) small tenant listing sign is allowed per individual building and may list multiple tenants. Such sign may be no more than one and a half (1.5) square feet.
- E. Directional Signs. Such signs may be freestanding or building mounted and shall not count toward the number of signs allowed per exterior face of building. Directional signs shall contain no business advertising and are permitted on private property in order to direct traffic flow, indicate the location of parking, or provide

other essential information necessary to guide vehicular or pedestrian traffic flow within the private property. Such signs shall be no larger than two (2) square feet. Tenant listing signs shall not be considered directional signs.

- F. Temporary Community Event Banner Signs. With prior written approval from the Director of Public Services, a system of decorative banners or banners identifying community events open to the public may placed by a business group or civic group on light poles on public property along Main Street, William Clark Drive, or Bridge Street. Such signs shall be temporary.
- G. Window Signs. Window signs shall be permitted without a permit and shall not be included when calculating sign area. Window signs shall be permitted on the first or ground floor only. In no event shall window signs cover more than twenty-five (25) percent of the area of any individual window.
- H. Awning. Awnings may not be made of plastic or metal and may not include illumination on the awning itself. Awnings are allowed no lower than nine (9) feet above the average grade of the public sidewalk beneath it and shall not extend more than four (4) feet into a public right-of-way and shall not extend into the curb abutting a public street. Awnings may include the street address and/or business name only. Such information shall be no more than twelve (12) inches in height and shall be placed on the front flap of the awning. (Ord. 4-5-10)

404.3.1.4 **Materials.**

Signs shall be constructed of materials including wood (painted or varnished and weather treated), stone, metals, concrete, and/or composite material providing similar texture, except that:

- 1) Awnings and banners may be constructed of canvas (or other lightweight yet sturdy material, not including metal or plastic except for in the support structure);
- 2) Signs without internal illumination may incorporate a vinyl wrap, or layer, which displays the graphics proposed. This is often used in lieu of paint.
- 3) Internally illuminated flex faced signs are not allowed. Such signs consist of an illuminated vinyl sign face. Internally illuminated sign boxes with cut out characters are allowed. The balance of the sign face must be opaque with no light visible except to for the cut face characters and logos.
- 4) Internally lit routed faced vinyl characters and/or logos are allowed so long as the characters and/or logos are the sign, they are building mounted, are limited to 12 inches in height and meet the other size requirements of this section.
- 5) Signs may also include plastic when:
 - a) The sign is used to identify the major tenant of buildings with over three (3) floors, as measured from the street level;
 - i) Such sign shall be placed at the top floor;
 - ii) Such sign may not be placed on façades facing a property line that directly abuts a residentially zoned property; and
 - iii) Such sign may be internally illuminated or back lit.

(Ord. of 4-5-10)

- 404.4 **Light Source Regulated.** In all districts, a lighting fixture that directly or indirectly illuminates a sign, must be designed so that the light source itself is shielded from view. This does not apply to signs illuminated by neon or illuminated tube type signs.
- 404.5 **Highway Guide Signs.** The Westbrook Area Chamber of Commerce may erect a guide sign on each entrance to Westbrook. Each sign must be placed so as to be in view only from Routes 302, 25, 22, Spring Street, and Stroudwater Street. Maximum size shall be 10" x 20", with directions focused on general areas rather than as advertisement for specific businesses.
- 404.6 **Consolidated Service Club Sign.** Service clubs in the city may have a consolidated sign in any district on each of Routes 25, 302, 22, Spring Street and Stroudwater Street entering the city. Each sign must meet the following requirements:
- A. Size. May not exceed a height of ten (10) feet or a width of ten (10) feet. The sign area for each individual club may not exceed ten (10) square feet.
 - B. Content. May contain only the name, symbol, meeting time, and meeting place of each service club.
 - C. Illumination. May not be internally illuminated.
- 404.7 **Installation of Banner and Community Event Signs.** On request, the Code Enforcement Officer (CEO) may permit a person or organization to install a banner sign across a public way under the following conditions:
- A. Citywide Interest. The purpose of the banner must be to announce a function of citywide interest, including church events, concerts, fund-raisers or similar activities.
 - B. State and Local Law. The installation of the sign must meet all the requirements of state and local law. The person requesting the installation shall provide the CEO with a sketch showing the dimensions, method of installation, materials, and text of the sign. The CEO shall establish the dates of installation and removal.
- 404.8 **Variance and Nonconforming Uses.** The granting of a variance from these sign ordinance provisions is prohibited. Where a sign exists as a nonconforming use, it shall not be extended, altered or enlarged, except that routine maintenance is permitted. Any entity proposing a development requiring Site Plan Review shall, as a condition of any approval of such development proposal, be required by the Code Enforcement Officer to bring any signs into conformance with the provisions of this ordinance, except as follows:

Individual legally nonconforming signs which are within developments seeking amended Site Plan Review approval and which will not be altered as part of the

proposed project are not required to be brought into conformance with this ordinance unless the development proposal involves at least a 20% increase in the total on-site building footprint or a change in use of the property. New and altered signs in such developments shall conform to this Ordinance.

405 (Removed in entirety; Ord. of 3-3-14)

406 Review of Paper Street Development

- 406.1. **Review and permit required.** Where a person seeks to construct, extend, widen or otherwise improve any street that is shown on a subdivision plan or plat recorded in the Cumberland County Registry of Deeds, the person shall first acquire a permit from the City as required by this Section 406.
- 406.2. **Application.** A person seeking a permit for the construction or improvement of a paper street or streets shall submit to the City an application containing the following items:
- A. A survey showing the area of the Paper Street or streets proposed to be developed or improved, together with the boundaries of any lots located along that area of the paper street or streets.
 - B. Evidence of the applicant's right, title or interest in the lots and in the Paper Street or streets.
 - C. A plan or plans prepared by a Professional Engineer, registered in the State of Maine, showing the following information:
 - 1. The name of all owners of property abutting the portion of the Paper Street or streets proposed to be developed or improved.
 - 2. Scale, date, north point, and delineation of the entire area proposed to be developed or improved.
 - 3. The location of all existing and proposed monuments for the area of the street or streets proposed to be developed or improved.
 - 4. The names of the developer of the street or streets, the engineer preparing the plan and the surveyor, together with the professional registration numbers of those who prepared the plan. Any plan submitted shall also bear the stamp of the professional who prepared the plan.
 - 5. The location of all proposed improvements, the width of paving and rights-of-way, profile, cross-section dimensions, curve radii of all existing and proposed streets; profiles of centerlines of proposed streets, of a horizontal scale of one (1) inch equals fifty (50) feet and a vertical scale of one (1) inch equals five (5) feet with all elevations referred to U.S.G.S. data and appropriate GIS references as set forth in Section 502.4, subsection B.24.
 - 6. A general street plan noting circulation, direction, any proposed traffic control devices, the location and type of any proposed street lighting.
 - 7. Accurate dimensions of rights of way, length and bearing of lot lines, and length or radii of horizontal curves.

8. Type, location, profile and cross-section of all existing and proposed drainage, both within and adjacent to the area of any street construction or improvement, and a description of storm water management plan.
 9. Location of features, natural and man-made, affecting the street, such as water bodies, streams, swamps, wetlands, vegetation, ditches, and areas of soils with severe or very severe limitations.
 10. Location of existing and proposed utilities including, but not limited to; water, sewer, electrical lines and telecommunications lines and profiles of all underground facilities.
 11. Existing and proposed location, size, profile and cross section of sanitary sewers proposed to be located within the street construction or improvement area.
 12. Topography with contours at elevation intervals of not more than 2 feet.
 13. Location of all existing trees and vegetation, within the proposed area of improvements and on any lots proposed to be developed in conjunction with the street and a delineation of which trees and vegetation will be retained and which, if any, will be removed.
 14. Location map to same scale as tax map, on a separate sheet if necessary; assessor's map and lot number.
 15. Grading, erosion control, and landscaping plan; proposed finish grades, slopes, swales and ground cover or other means of stabilization.
 16. A statement from the Maine Department of Inland Fisheries and Wildlife as to whether any significant wildlife habitats are located on the site.
 17. A statement from the Maine Department of Conservation as to whether any rare or significant botanical species are located on the site.
- D. A statement by a licensed engineer as to the adequacy of the storm water management program to serve the watershed area within which the project is listed.
- E. A statement from the Portland Water District of conditions under which the District will supply water and approval of the size and location of mains, valves and hydrants proposed. Responsibility for such design shall remain with the Portland Water District and any other appropriate agencies.
- F. .Names and addresses of all property owners within a five hundred (500) foot radius of the proposed street construction or improvement. The names and addresses of such owners shall be determined by use of the most current records of the Assessor's Office.

G. A listing of any other State or local permits that will be required for the development of the paper street or streets or for any lots adjacent to the portion of the paper street or streets proposed to be developed.

406.3. **Application fee.** Any application for approval of construction or improvement of a paper street or streets shall be accompanied by a fee of \$100.00 for each 50 feet of street to be constructed or improved.

406.4. **Other costs.** An applicant seeking approval for the construction or improvement of a paper street or streets shall be responsible for the costs of all notice required under Section 406.6. Such costs shall be paid prior to the completion of review of the application. No permits shall be issued if fees due under this section remain unpaid.

406.5. **Pre-application meeting.** Any person who is proposing the construction or improvement of a paper street or streets may request a meeting with the City Planner and the City Engineer prior to the submission of an application in order to review the procedures for review and specific issues associated with a proposal.

406.6. **Submission of application; notice.** Upon receipt of any application for construction or development of a paper street, the Planning Department shall indicate upon the application the date of its submission. Within twenty-one (21) days of the date of submission of the application, the Planning Department shall mail, by first class mail, postage pre-paid, notice to all residents and property owners within a five hundred (500) foot radius of the proposed paper street construction or improvement. The notice shall include a brief description of the application and will notify the recipient of the right to request Planning Board review under Section 406.7 and that comments concerning an application must be made in writing to the City Planner. In addition, the notice may include the date and time of any neighborhood meeting that is scheduled by the applicant. The Planning Department shall keep a list of persons notified and shall indicate on the list the date that the notice was mailed. Failure of a person to receive notice under this section will not invalidate any decision made by the Planning Department or the Planning Board and will not require any rehearing of the application.

406.7. **Request for Planning Board review.** A person who receives notice under Section 406.6 may request that the Planning Board review the application under the provisions of Section 406.10. The request must be made in writing and must be received by the City within thirty (30) days of the date of the City's mailing of notice under Section 406.6. In the event that an application is determined to be incomplete under Section 406.8, any request for Planning Board review shall remain valid for the completed application.

406.8. **Determination of completeness.** After the receipt of an application, the City Planner shall commence review of the application under the standards set forth in Section 406.11. The City Planner shall determine within twenty-one (21) days whether the application is complete and shall notify the applicant of any additional required information or submissions. This twenty-one (21) day period may be extended by mutual agreement in writing by the City Planner and the applicant.

406.9. **Review by City Planner and City Engineer.** Once the application is determined to be complete, the City Planner and the City Engineer shall complete review of the application within thirty (30) days of the date of determination of completeness. The review shall be made under the standards and requirements set forth in Section 406.11. This thirty (30)-day period may be extended upon mutual agreement in writing by the City Planner and the applicant. Where no one has requested a Planning Board review under Section 406.7, the City Planner shall issue a written decision. Any approval granted may be subject to conditions required to ensure compliance with Section 406.11 or to regulate the conduct of the development of the Paper Street or streets. Any conditions will be included in the written decision.

406.10 **Planning Board review .** Where a person has filed a request for Planning Board review under Section 406.7, the City Planner will forward to the Planning Board proposed findings and any proposed conditions of approval. The proposed decision shall be placed upon the Planning Board's consent agenda and a joint public comment period shall be held for all items on the consent agenda, unless a member of the Planning Board requests the removal of a specific application from the consent agenda for separate review and consideration. The Planning Board shall review all applications under the standards set forth in Section 406.11 and shall have the authority to impose conditions on any approval. The Planning Board may request that the applicant perform a traffic study if the Planning Board determines that such a study is needed to determine whether the application complies with the requirements of Section 406.11.G.

406.11. **Review standards.**

- A. Storm water. Any application for construction or improvement of a paper street or streets shall demonstrate that adequate provision will be made to collect, treat and dispose of storm water. The plan shall demonstrate that, to the extent reasonably possible, storm water shall be retained on the site using natural features, that contaminants shall be reduced before leaving the area of the improved paper street and that the rate of flow onto properties in the area shall not exceed conditions existing prior to the construction or improvement of the paper street.
- B. Street Construction Standards. All construction or improvement of a paper street or streets shall meet the requirements of Section 502.5C of this Land Use Ordinance. Any street that will have a dead end shall provide a turnaround approved by the City Engineer and the Fire Chief for adequacy to support and accommodate maintenance and emergency vehicles.
- C. Erosion Control. Any construction or improvement of a paper street or streets shall be subject to best management practices for erosion control. All site activities shall utilize natural conditions to the maximum extent possible so that filling, excavation and earth moving is kept to a minimum. Site activities will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;
- D. Lot Development. Lots adjacent to a paper street or streets proposed to be constructed or improved shall be developed in accordance with the applicable

zoning requirements for the district in which the property is located. No trees shall be cut from the required rear setback area of such a lot until the issuance of a final certificate of occupancy for the principal structure on the lot. Each such lot shall include at least two (2) street trees along the paper street area to be developed, unless the topography, geography or soils of the lot will not accommodate more than one (1) tree, and other appropriate landscaping for the proposed structures and shall retain existing vegetation to the extent possible. Street trees shall be located between the edge of the travel lane and the edge of the street right-of-way.

- E. Provision of Open Space. Where the proposed construction or improvement of a paper street or streets shall exceed one hundred fifty (150) feet in total combined length, the applicant shall set aside as open space an area that is at least ten (10) percent of the total area of the lots fronting on the paper street or streets being constructed or improved, excluding the area of the lots fronting on the first one hundred fifty (150) feet. Such land either shall be set aside within the area of those lots or shall be in close proximity to those lots. For purpose of this section “close proximity” shall mean land that is located within two thousand two hundred fifty (2,250) feet from those lots and that is not separated from those lots by a street that is more than two lanes in total width or that has a posted speed limit of more than thirty-five (35) miles per hour. Land to be set aside as open space shall either be deeded to an organization or entity that is authorized as a holder of conservation easements as defined in 33 M.R.S.A. § 476, or it shall be protected by deed restrictions, which shall be reviewed and approved by the City for compliance with the requirements set forth herein. No structures other than small structures accessory to a recreational use shall be permitted on the open space land and no pavement shall be allowed, except for the creation of trails. Any open space provided off-site shall be usable for active or passive recreation purposes or shall include areas that are identified by the Department of Inland Fisheries and Wildlife as significant wildlife habitat. Wetland areas as defined in 38 M.R.S.A. § 436-A shall not be included in open space under this section. An applicant may elect to pay a fee in lieu of provision of open space. That fee shall equal \$1,500.00 for every fifty (50) feet of paper street that is constructed or improved, excluding the first one hundred fifty (150) feet.
- F. Water and Sewer Capacity. Where the proposed construction or improvement involves the extension of public water or public sewer, the applicant shall demonstrate that the existing service is adequate to support the proposed extension of the service or shall upgrade the existing facilities as required to provide the service.
- G. Traffic. The proposed paper street development will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.

406.12. Performance guarantee.

- A. Posting of guarantee. Prior to the commencement of any construction related to the paper street development or the issuance of any building permits associated with the

paper street development, the developer shall file a performance guarantee with the City. The performance guarantee shall be a certified check payable to the City, a performance bond running to the City, or a letter of credit from a financial institution in amount and form acceptable to the City. The check, bond or letter of credit must equal at least the total cost of furnishing, installing, and completing the paper street construction and all related improvements within 2 years of its date.

B. Release of guarantee. Before the City releases a performance guarantee, the developer shall obtain the following:

- (1) A statement by the Public Works Department that all streets and storm drain systems have been constructed and completed in conformance with the approved plan.
- (2) A statement by the City Engineer that all sewer lines and connections in the street have been constructed and completed in conformance with the approved plan.
- (3) A statement by the Superintendent of the Portland Water District that all water mains and hydrants have been installed and completed in conformance with the approved plan.
- (4) A statement by a land surveyor, registered in the State of Maine, that all permanent boundary monuments on street and lot lines have been installed in the locations designated on the approved plan. The applicant shall be responsible for the cost of obtaining this statement.

Upon release of the performance guarantee, the City shall provide the applicant with a certificate of compliance. At the discretion of the Planning Department, a phased release of the performance guarantee can be implemented.

406.13 **Other reviews.** Review and approval under this Section 406 are in addition to any other review and approval required under State law, federal law or any provision of the City Code. Where there is any inconsistency between such review standards, the more stringent standard shall control. (ord. 4/03/06)

407 Downtown Housing Overlay District

The purpose of the Downtown Housing Overlay District is to allow residential uses at densities that will complement the efforts to revitalize the City's downtown into a prominent regional service center. The addition of higher density housing will increase activity downtown after the nine-to-five business hours, and provide more patrons for downtown service businesses. In accordance with the Comprehensive Plan, along William Clarke Drive, Bridge Street and Main Street, multi-family housing is permitted on all floors except the sidewalk level, thus preserving the availability of ground-floor commercial space.

The boundaries of the district are defined as follows: On the South by William Clarke Drive, on the East by Spring Street and Tax Map 33, Lot 142, on the North by the Presumpscot River and Tax Map 32, Lots 100, 101 and 102, on the West by Saco Street. All Tax Map and Lot numbers are based on the Tax Maps as of October 13, 2006. The district is also depicted on the Westbrook Zoning Map.

(Ord. of 4-5-10)

407.1 Permitted Uses: All uses permitted in the underlying zoning district. (Ord. of 4-5-10)

407.2 Special Exceptions: The following uses are permitted in the Downtown Housing Overlay District as a special exception under Section 204:

All uses listed as a special exception in the underlying zoning district.

407.3 Performance Standards: The following performance standards apply in the Downtown Housing Overlay District.

- | | |
|----------------------------------|--|
| A. Minimum Lot Size: | Same as underlying zone |
| B. Dimension Requirements: | Same as underlying zone |
| C. Maximum Footprint Factor: | Same as underlying zone |
| D. Maximum Gross Density Factor: | Same as underlying zone |
| E. Landscaping Factor: | None |
| F. Residential Density Factor: | 1 dwelling unit per 500 S.F. of base site area |
| G. Lighting: | All outdoor lighting must be of the cutoff luminaire variety |
| H. Noise: | Same as underlying zone |
| I. Vibrations: | Not applicable |

J. Odors: Not applicable

K. Traffic Impact: Same as underlying zone

L. Storage of Materials: Enclosed storage must be provided for dwelling units

M. Parking Requirements:

(1) Minimum: A minimum of 1 on-site parking space must be provided per dwelling unit, except that an applicant may use the following alternatives in-lieu of providing on-site parking spaces:

- (a) Provision of dedicated parking spaces within 1,000 linear feet of the building;
- (b) Payment of a fee-in-lieu of providing spaces in an amount to be determined by the City Council and provided for in the municipal fee schedule. The fee shall be placed into a fund dedicated to downtown parking or transit improvements;
- (c) Provision of a shuttle service or jointly owned vehicle that is owned by either the building owner or homeowners association. A parking analysis must demonstrate the number of units that will benefit from the shared service.

(Ord. of 01-08-07)

408 Residential Growth Area 1 Business Office Overlay Zone

- 408.1 **Purpose.** The purpose of this overlay district is to allow limited business offices in existing structures within the Residential Growth Area 1. Businesses must receive a Special Exception to locate within the district. Particular interest will be paid to the potential impacts of businesses upon adjoining residential uses. In particular, parking, traffic and building appearance will be taken into consideration.
- 408.2 **Area of Zone.** The area to be included in the Residential Growth Area 1 Business Office Overlay Zone is depicted on the Westbrook Zoning Map.
- 408.3 **Permitted Uses.** Those uses permitted as a matter of right in the underlying zoning district.
- 408.4 **Special Exception.** Those uses permitted as a Special Exception, in accordance with Section 204, in the underlying zoning district, plus the following:

Business Office 2

- 408.5 **Performance Standards.** In addition to those standards defined in the underlying zoning district, Village Review Overlay Zone, and/or for Special Exceptions in Section 204, the following performance standards apply in the Residential Growth Area 1 Business Office Overlay Zone:
- A. Minimum Lot Size: 10,000 S.F.
 - B. Signs: The regulations in Section 404.2 Signs in Residential Districts, shall apply to all uses in Section 407.
 - C. Parking: The minimum parking standards for Offices in Section 505.1 must be met as part of the Special Exception review.
 - D. Building Additions and Alterations: Building additions may only be allowed on the side or rear of the structure. On corner lots, building additions must be constructed on the rear or side that does not face a public street. Building additions and/or alterations must retain the residential style of the structure. This includes, but is not limited to, windows, doors, roof pitches, siding material, and exterior lighting fixtures.

(Ord. of 02-05-07)

409 County Road Commercial Overlay Zone

409.1 **Purpose.** The purpose of this overlay district is to allow limited retail and service uses to serve the vibrant industrial and manufacturing zones surrounding County Road in Westbrook. This overlay zone does not represent a change in the vision for this area, which is to preserve suitable remaining undeveloped lands for industrial and manufacturing uses, which benefit from convenient highway access, provide higher wage jobs, and add to the tax base while requiring few public services. This overlay district is intended to serve the needs of the businesses in the County Road corridor without creating a destination retail and service corridor which could compromise the attractiveness of the area for its target user, industrial and manufacturing businesses.

While it is the intent of this overlay zone to provide for limited retail and service opportunities, such uses can be inherently focused on the convenience of the automobile and can include lot layouts, building design and structures that are inconsistent with the appearance and scale of the County Road area, therefore this overlay establishes policies to promote a harmonious relationship between industrial and manufacturing uses, retail and service uses and the established built environment in this corridor. Development utilizing this overlay zone shall meet the objectives of the Long Creek Watershed Management Plan.

409.2 **Area of Zone.** Those properties with frontage on County Road and located no closer than 700 feet to Spring Street may utilize the provisions of this overlay zone, which is depicted on the Westbrook Zoning Map, provided that they meet all of the criteria set forth in this section, in addition to all other applicable criteria established by this Ordinance. The spacing requirement from the intersection of Spring Street and County Road is intended to maintain the Level of Service that was achieved there with the recent publicly funded rebuild of this intersection.

409.3 **Permitted Uses.** Those uses permitted as a matter of right in the underlying zoning district. Accessory uses are not allowed except for those uses that are allowed herein or in the underlying district.

409.4 **Special Exception.** Those uses permitted as a Special Exception, in accordance with Section 310, in the underlying district, plus the following:

| | |
|-------------------------|--------------------------|
| Retail Class 1, 2 and 4 | Restaurant Class 1 and 2 |
| Neighborhood Grocery | Medical Office |
| Auto Repair | Bank Class 1 and 2 |
| | |

409.5 **Performance Standards.** In addition to those standards defined in the underlying zoning district, the following performance standards apply in the County Road Commercial Overlay Zone. Where there is conflict with the underlying zoning district, the provisions of this overlay zone shall apply.

- A. Maximum lot size: 60,000 S.F.
- B. Minimum lot width: 200'. Flag lots are prohibited.

Building placement. New buildings shall be located so that they generally match the established building line of the immediate area, along the County Road frontage. The immediate area is measured on the same side of the street, by counting 6 principal buildings to the left, and six principal buildings to the right of the proposed building. For the purposes of this district, the established building line means the predominant building setback, as measured in this paragraph. Along County Road, the building setback for new primary structures shall be no more than 100 feet.

- C. Accessory structures. For the purposes of this district, accessory structures, such as but not limited to drive-in and drive-up windows, gas station canopies, fuel pumps, and/or pump islands, shall be located directly between the principal building and the rear lot line. In no event shall accessory structures be located between the primary structure and County Road. Accessory structures shall be architecturally integrated with the principal building through the use of the same or compatible materials and colors. Accessory structures shall be no taller than the principal building. Any lighting fixtures or sources of light that are a part of the underside of an accessory structure shall be recessed in to the underside so as to not protrude below the ceiling surface. Service bay doors shall not be located facing County Road.
- D. Building Additions and Alterations: Building additions and alterations shall meet the building placement requirements and shall retain architectural style of the existing building. This includes, but is not limited to siding materials and colors.
- E. All service and repair operations shall occur within buildings enclosed by a roof and a wall on all sides.
- F. Storage. Outdoor storage shall be located between the principal building and the rear lot line and shall be screened from view of public ways.
- G. Set Back Requirements From Natural Resources: No buildings, outbuildings, or storage areas may be located within 75 feet of a wetland or designated water body.
- H. If land disturbance for construction is expected to be less than 1 acre, a stormwater management plan shall be developed and submitted to the LCWMD for review. The Stormwater Management Plan shall address expected stormwater runoff volumes and treatment methods in order to control peak flows and to treat stormwater runoff from the property those levels established by Chapter 500, the Stormwater Management Rules promulgated by Maine Department of Environmental Protection, as may be amended from time to time. Plans shall also contain an erosion and sedimentation control plan, details for any best management practices recommended to meet treatment requirements, and a post construction maintenance plan that includes good housekeeping appropriate to the land use.

- I. Proposed construction drawings and stormwater management plans shall be submitted to the LCWMD for review and approval at the developer's expense.
- J. The Developer shall provide at their expense Third Party Inspection for construction of all required erosion and sedimentation control measures and stormwater best management practices proposed for the site and provide documentation to the LCWMD related to their construction. The Developer may use a third party inspector who has MDEP certification or directly hire the LCWMD to perform the inspections and provide the documentation.
- K. The Developer and/or Owner must have a certified professional perform annual inspections of any installed stormwater best management practices on the property and provide annual reporting to the LCWMD. The Developer and/or Owner must also maintain their stormwater best management practices in accordance with design engineer recommendations to ensure their continued performance.

(Ord. of 3-4-13)

Chapter V. Subdivision and Site Plan Review

500 Westbrook Subdivision and Site Plan Review Standards.

500.1 **Planning Board.** The Planning Board shall be responsible for subdivision and site plan reviews in accordance with this ordinance. In this capacity, the Planning Board shall act in accordance with the provision outlined in Chapter 2 of the City Charter, establishing the Planning Board.

500.2 **Review Process.** The following is an overview of the subdivision and site plan review process:

- A. Pre-application conference;
- B. Neighborhood meeting;
- C. Sketch Plan; and
- D. Final Plan

Sketch plan review may be required at the discretion of the City Planner and Planning Board Chair based on the complexity of the project and does not constitute substantive review of an application for purposes of 1 M.R.S.A. Section 302. The purpose of sketch plan is to obtain preliminary feedback from the Planning Board and the Public on the proposed project. (Ord. of 4-5-10)

A. Application, notice; completed application. This subsection governs the procedure to be followed after receiving an application for a proposed subdivision and site plan review.

(1) When an application is submitted, the applicant shall schedule an application review conference for the following week.

(2) When an application is received, the municipal reviewing authority shall:

- (a) Give a dated receipt to the applicant,
- (b) Notify by mail all property owners within 500 feet of any portion of the property submitted for subdivision and site plan review; public and private rights-of-way do not limit the 500 foot distance measurement.
- (c) Notify by mail the City Clerk and the reviewing authority of municipalities that abut or include any portion of the subdivision or site plan.

(2) Within thirty (30) days after receiving an application, the municipal reviewing authority shall notify the applicant in writing either that the application is complete or, if the application is incomplete, the specific additional material needed to complete the application.

- (4) After the municipal reviewing authority has determined that a complete application has been filed, it shall begin its full evaluation of the proposed subdivision and site plan.
 - (5) The municipal reviewing authority may not accept or approve final plans or final documents prepared within the meaning and intent of Title 32 M.R.S.A., Chapter 121 that are not sealed and signed by the professional land surveyor under whose responsible charge they were completed, as provided in Title 32 M.R.S.A., section 13907.
- B. Public Hearing; Notice. If the municipal reviewing authority decides to hold a public hearing on an application for subdivision approval, it shall hold the hearing within thirty (30) days after determining it has received a complete application. The municipal reviewing authority shall give notice of the date, time and place of the hearing:
- (1) To the applicant, and
 - (2) By publication, at least 2 times, in a newspaper having general circulation in the municipality in which the subdivision is proposed to be located. The date of the first publication must be at least 7 days before the hearing.
- C. Decision; Time Limits. The municipal reviewing authority shall — within thirty (30) days of the public hearing or, if no hearing is held, within sixty (60) days of determining it has received a complete application, or within any other time limit that is otherwise mutually agreed to with the applicant — issue one of the following decisions:
- (1) Deny approval of the proposed subdivision,
 - (2) Grant approval of the proposed subdivision,
 - (3) Grant approval, subject to terms and conditions that it considers advisable, in order to:
 - (a) Satisfy the criteria listed in 30-A M.R.S.A. section 4404,
 - (b) Satisfy any other regulations adopted by the municipality, and
 - (c) Protect and preserve the public health, safety and general welfare.

(Ord. of 11-17-14)

500.3 **Authority for Subdivision and Site Plan Review.** Enabling language and reference to state law. The authority for subdivision and site plan review is vested in the Westbrook Planning Board in accordance with Chapter 2 of the Code of Ordinances, and 30-A M.R.S.A., Section 4403, for subdivision review.

500.4 **Joint Hearing and Application.** If a proposed final plan requires both subdivision and site plan review, the applicant must apply for a joint review of the final plan. Procedures for both subdivision and site plan review must be met in order to initiate the fair hearing process.

500.5 **Change in Ownership.** Where there is a change in ownership of a project after approval has been granted, the board may request new financial capability information, as well as other factors that the board deems necessary because of changing conditions.

500.6 **Notification Costs.** The applicant shall incur all costs for notices and public hearings conducted pursuant to this Ordinance.

500.7 **Revision to Approved Plans.** When an applicant applies for approval of a revision to a plan approved by the Planning Board, such application shall, in all respects, follow the procedures and satisfy the requirements of Chapter V of this Ordinance. All appropriate changes must be in accordance with this zoning ordinance. (Ord. of 11-17-14)

500.8 **Consulting and Review Fees; Inspection Fees.**

A. Notwithstanding any other provision(s) of the City's Land Use Ordinances, Chapters I through VIII (the "Code"), to the contrary, and in addition to such fees as are otherwise specified by the Code, the City shall assess fees to cover 100 percent of its costs related to independent geotechnical, hydrologic, engineering, planning, legal, and similar professional consulting services incurred in the review of site plan and subdivision applications. Such fees shall be subject to the following limitations:

- (1) Such fees shall only be as expressly provided by this Sec. 500.8;
- (2) Such consultation shall be limited to reasonable and necessary review, as allowed by the pertinent ordinance, which exceeds the expertise of City staff or their ability to review the application materials within the time limits otherwise required by law or Ordinance.
- (3) Such fees shall be assessed only to recover costs directly associated with review of the application submitted by the applicant to whom they are assessed;
- (4) Such fees shall be reasonable in amount, based upon the consulting time involved and the complexity of the review;
- (5) The results of the consultation for which such fees are assessed shall be available for public review, but such results shall be deemed to have been made solely for the benefit of the City of Westbrook and shall remain its property; and

- (6) Such fees shall be assessed for the privilege of review and shall be payable without regard to consultation results or the outcome of the application.
- B. An escrow account shall be established with the City by the applicant to guarantee payment in advance of actual fees assessed pursuant to this Sec. 500.8. The original deposit shall be an amount specific to the application, as accorded elsewhere in this Code. If the balance in the escrow account shall be drawn down by 75 percent, the City shall notify the applicant and require that an additional amount be deposited to cover the cost of remaining work before any such remaining work is undertaken. The City shall continue to notify the applicant and require that any such additional amount(s) be deposited whenever the balance of the account is drawn down by 75 percent of the original deposit. Any excess amount deposited with the City in advance shall be promptly refunded to the applicant after final action on the application.
- C. Any dispute regarding the application of this Sec. 500.8 or the amount required to be paid, either in advance or upon completion, may be appealed in writing within 10 days to the City Administrator. The City Administrator, after due notice and investigation and for good cause shown, may affirm, modify, or reverse the disputed decision or reduce the amount assessed.
- D. In an effort to minimize the use of outside or independent consulting, the provisions of this Sec. 500.8 shall be subject to the following additional limitations:
- (1) The City Engineer will devote no less than two (2) hours, if needed, to each development project and, if in the City Engineer's sole judgment his/her work load permits, he/she may work additional time on an individual development project without referring it to outside or independent consulting, but the City shall charge for such additional time at a rate determined by the City Council on a fee schedule adopted for that purpose; and
 - (2) The City Planner will devote no less than four (4) hours, if needed, to each development project and, if in his/her sole discretion his/her work load permits, he/she may devote additional time to a project without referring it to outside or independent consulting, but the City shall charge for his/her time at a rate determined by the City Council on a fee schedule adopted for that purpose; provided, however, in his/her sole discretion, he/she may immediately refer to outside or independent consulting any major subdivision having five (5) or more lots or dwelling units or any major site plan.
- E. Prior to issuance of a Street Opening Permit, or the first permit required for the project, the applicant shall pay to the City a site improvement inspection fee equal to the amount of 2% of the site improvement costs. This shall be separate from Building Permit fees, which cover inspection of buildings. While this requirement applies to both subdivision and site plan approvals, a project with both subdivision and site plan approval is subject to a single site improvement inspection fee.
(Ord. of 4-5-10)

F. This Sec. 500.8 shall be administered by the City Planner or other City employee responsible for administering the ordinance under which review is sought. No building permit or certificate of occupancy may be issued nor subdivision plat released until all fees assessed hereunder have been paid in full.

(Ord. of 07-11-05)

501 Waiver Provisions.

501.1 **Requirements Waived.** The Planning Board may waive the requirements of subdivision or site plan review, provided that the waiver does not result in:

- A. Undue water or air pollution,
- B. An inadequate water supply,
- C. Unreasonable soil erosion,
- D. Unreasonable traffic congestion or safety risk,
- E. Inadequate sewage disposal capacity,
- F. Inadequate solid waste disposal capacity,
- G. An adverse impact on scenic or natural beauty, aesthetics, historic sites, or rare or irreplaceable natural areas,
- H. Substantial non-conformance with this Ordinance or the Comprehensive Plan.

Factors which may be waived include, but are not limited to, final plan submission requirements; design standards for streets or sidewalks; storm water management requirements; erosion and sedimentation requirements; public open space requirements; appearance assessment; and solar access design. The applicant shall meet with appropriate city staff to discuss potential waivers. The city staff shall make recommendations to the Planning Board concerning any requested waiver. When the Board determines that the application is acceptable for review, it shall also determine which waivers are acceptable.

501.2 **Affordable Housing Waiver.** The Planning Board may waive development impact fees or allow alternative designs in return for the creation of affordable housing. The Board shall reduce the fee based on the number of units that shall be sold or rented on the market at 80% of median price or rent for the Greater Portland area, as established by MSHA or HUD, respectively. Alternative designs include but are not limited to:

- A. Any project that is identified as a cluster project, as described in the general provisions of this ordinance,
- B. Reduction in the amount of granite curbing used,
- C. Reduction in the amount of sidewalks developed,
- D. Reduction in roadway widths, or

- E. Others, as deemed appropriate by the Planning Board through its evaluation of the particular project.

502 Subdivision Authority and Prohibition Provisions.

502.1 **Authority.** In accordance with Maine Revised Statutes Annotated, the power to grant subdivision approval is vested in the Planning Board, which is the municipal reviewing authority.

502.2 **Recording and Construction Prohibited.** A subdivision plan may not be recorded in the Cumberland County Registry of Deeds, nor shall utility installation, ditching, grading, tree removal, site preparation or construction of any structure be commenced on a subdivision, until the Board has approved the final plan and the performance bond is in place.

502.3 **Subdivision Sketch Plan Submission Requirements.** The following information is required for subdivision sketch plan review:

- A. Names of applicant, project and consultant,
- B. Date, north point, scale,
- C. Perimeter boundary, locations reserved for future development,
- D. Tentative rights-of-way locations, lot lines, lot numbers, lot acreage,
- E. Estimated soil boundary locations from the United States Department of Agriculture's Soil Survey of Cumberland County, Maine, as revised, noting areas of severe and very severe soil limitations,
- F. Land cover areas (e.g. woods, fields),
- G. Topographic features, including areas of steep slopes, bedrock outcrops, ponds, streams, aquifers, groundwater areas, and recharge floodplain areas in accordance with the Federal Emergency Management Administration Program. Acceptable data for the sketch plan submission can also be obtained from sources such as the U.S.G.S. and NWI,
- H. Tentative location of proposed structures, owners of existing structures, and neighboring land uses,
- I. Special conservation and recreation areas, and
- J. Locator map.
- K. Non-refundable Sketch Plan application fee in an amount established by the City Council.
- L. An electronic copy of all application materials in a format acceptable to the City Planner.

(Ord. of 03-07-05; 11-17-14)

502.4 **Subdivision Final Plan Submission Requirements.** The following additional information is required for subdivision final plan review.

- A. Application Information. An applicant for subdivision must submit the following as part of the final plan:

- (1) Project name,

- (2) Name, address, phone number of applicant and owner,
- (3) Name, address, phone number of authorized representative,
- (4) Name, registration number, address, phone number of engineer, surveyor, architect, landscape architect or planner,
- (5) Interest of applicant in property and abutting property,
- (6) Tax map and lot numbers,
- (7) Zoning,
- (8) Acreage to be developed,
- (9) Covenants, deed restrictions, easements, or rights of way existing or planned,
- (10) Existing use of the property,
- (11) Variances requested of the Zoning Board of Appeals,
- (12) Construction schedule, costs, and performance guarantee arrangement, proof of financial capability, relationship between developer, design consultant, and project contractor, and
- (13) Non-refundable final plan application fee in an amount established by the City Council.
- (14) Electronic copy. An electronic copy of all application materials shall be submitted with the initial and each subsequent submission. This shall be in a file format acceptable to the City Planner.

(Ord. of 11-17-14)

- B. Map Requirements. The final plan shall consist of 1 mylar for recording purposes, and 15 prints to be retained by the City, with a maximum size of 30" x 48," at a scale between 1"= 40' and 1 "=100' and to include:

(Ord. of 05-07-05)

- (1) Name of subdivision,
- (2) Scale, date, north point, acreage, number of lots,
- (3) Boundaries of tracts with accurate distances and bearings, location of all permanent monuments properly identified as existing or proposed; and certification by a licensed land surveyor that the land has been surveyed and the boundaries established,
- (4) Zoning requirements, proposed project and yard dimension calculations in relation to existing zoning standards.
- (5) Names of owner, engineer and surveyor; and professional registration numbers of those who prepared the plan,
- (6) Names and addresses of abutting landowners,
- (7) Name, location, width of paving and rights-of-way, profile, cross-section dimensions, curve radii of all existing and proposed streets; profiles of centerlines of proposed streets, of a horizontal scale of 1" = 50' and a vertical scale of 1" = 5', with all elevations referred to U.S.G.S. datum and appropriate GIS reference (as noted in section 502.4, subsection (m)),
- (8) A general road plan noting circulation, direction, traffic control devices, street lighting, and type of lighting proposed,
- (9) Accurate dimensions of rights of way, length and bearing of lot lines, lot areas, length or radii of horizontal curves, lot numbers, and building setbacks,

- (10) Existing and proposed easements and dedications associated with the subdivision,
- (11) Type, location, profile and cross-section of all existing and proposed drainage, both within and adjacent to the subdivision, and description of storm water management plan,
- (12) Location of features, natural and manmade, affecting the subdivision, such as water bodies, streams, swamps, wetlands (consistent with Army Corp and DEP requirements), vegetation, railroads, ditches, buildings, and areas of soils with severe or very severe limitations,
- (13) Location of existing and proposed utilities including, but not limited to; water, sewer, electrical lines, telecommunications lines and profiles of all underground facilities,
- (14) Existing and proposed location, size , profile and cross section of sanitary sewers; description, plan and location of other means of sewage disposal with evidence of soil suitability,
- (15) Topography with contours at elevation intervals of not more than 2 feet;
- (16) On land one acre or less in size, the location of all existing trees, groves of important species, both those to be retained and those to be removed. On land over an acre in size, all areas of tree preservation, groves of important species and those trees, outside of preservation areas, to be retained. (Ord. of 4-5-10)
- (17) Existing and proposed locations, widths, and profiles of sidewalks and walking paths,
- (18) Location map to same scale as tax map, on a separate sheet if necessary; assessor's map and lot number,
- (19) Approximate location and dimensions of specified parking areas,
- (20) Proposed ownership and approximate location and dimensions of open spaces for conservation and recreation,
- (21) Grading, erosion control, and landscaping plan; proposed finish grades, slopes, swales and ground cover or other means of stabilization,
- (22) Reference to special conditions as stipulated by the Planning Board, on the plan or identified as specific documents filed with the Board, and
- (23) Design considerations for solar access.
- (24) Digital Transfer of any subdivision data in GIS format on the City's Horizontal Datum: Maine Stateplane Coordinate System: Maine West Zone 4101, FIPS Zone 1802, North American Datum 1983; Units: Feet; Vertical Datum: National Geodetic Vertical Datum, 1929,
- (25) Digital Transfer on a compact disc (CD) of any subdivision data in Computer Aided Design (CAD) format as a .dwg file,
- (26) Waivers and conditions of approval granted by the Planning Board.
- (27) Eight (8) copies (on 11x17 sized paper) of the overall subdivision plan sheet for review by the Recreation and Conservation Committee. (Ord. of 03-07-05)

C. Supporting Documents. The final plan submission must include the following information:

- (1) Documentation of ownership or contract,
- (2) Legal documents including, but not limited to: deed or covenant restrictions, homeowners association by-laws, and easements,

- (3) Performance guarantee or conditional agreement and a financial capacity statement regarding the ability of the applicant to carry out the project,
- (4) Any required permit from the Department of Environmental Protection, Marine Resources, Army Corps of Engineers, or Department of Inland Fisheries and Wildlife, wherever applicable,
- (5) Any additional statements or studies required by the Planning Board which are deemed necessary in accordance with this Ordinance,
- (6) Statement by a Professional Engineer, registered in the State of Maine, as to the adequacy of the storm water management program to serve the watershed area within which the project is listed,
- (7) A statement from the Portland Water District of conditions under which the District will supply water, and approval of the size and location of mains, valves and hydrants proposed. Responsibility for such design shall remain with the Portland Water District and any other appropriate agencies,
- (8) A statement from the Fire Chief approving the number, size, and location of hydrants, available pressure levels, road layout and street and project name, and any other fire protection measures to be taken,
- (9) A statement by the Portland Water District of the conditions under which the Sewer District will provide sewage disposal service and approval by the Public Works Department of the diameter, slope, and invert elevations of the sanitary sewers proposed within the subdivision; or a statement relative to the septic tank pumping capacity of the sewage disposal system,
- (10) Where a septic system is to be used, approval by the Plumbing Inspector and a certified soils scientist or evaluator with evidence of soil suitability is required,
- (11) Approval by the Public Works Department of all street and appropriate utilities designs,
- (12) A statement from the Police Chief relative to traffic circulation,
- (13) A statement from the Recreational Conservation Commission relative to issues of open space and recreation areas,
- (14) A statement from the Public Works Director addressing any plan for solid waste removal and recycling,
- (15) Submittals from any other City agency which the Planning Board deems necessary,
- (16) A community facilities impact analysis in accordance with the subdivision or site plan review ordinance.

502.5 Subdivision General Provisions:

- A. Unusable Land. Unusable land as defined in Section 201 of this Ordinance, may not be considered in the determination of buildable lots, but it may, with the approval of the Planning Board, be designated for parks or other open or common space, provided that there is no danger to health or safety.
- B. Preservation of Natural Areas. The Planning Board may require that the plan of a proposed subdivision provide for the preservation or enhancement of natural features such as water courses, trees with diameter in excess of 10", scenic vistas,

and wetland areas. Streets and lots must be laid out so as to take advantage of natural topography and southerly exposure. Wherever possible, extensive grading and filling must be avoided.

- C. Design Standards for Streets and Private Rights-of-Way. All streets in a proposed subdivision must be constructed to the following specifications, and the cost of construction must be paid by the applicant. All streets and private ways must be designed by an engineer registered in the State of Maine. The plan and profile of the design must be approved by the City Engineer. (Ord. of 03-07-05; 4-5-10; 8-6-12)

| | Arterial | Collector | Local St. | Private Way |
|---------------------------------------|-----------------------------|---------------------------|------------------|------------------------|
| (1) Minimum right-of-way | 120' | 60' | 50-60' | 50' |
| (2) Minimum width of pavement | (4) 12 foot traffic lanes | (2) 12 foot traffic lanes | 24' | 20' |
| (3) Minimum grade | 0.5% | 0.5% | 1% | 1% |
| (4) Maximum grade | 0.6% | 8% | 8% | 8% |
| (5) Maximum grade at intersections | 3% | 3% | 3% | |
| (6) Minimum angle of intersections | 60 degrees | 60 degrees | 60 degrees | 60 degrees |
| (7) Minimum center line radius curves | 200' | 200' | 100' | 200' |
| (8) Minimum paved shoulder width | 10' | 8' | 1' | 1' |
| (9) Minimum road base | | | | |
| Excavation | 24" | 21" | 21" | 21" |
| Sub-base; | | | | |
| Compacted-gravel | 21" | 18" | 18" | 18" |
| Upper-base; | | | | |
| Crushed gravel | 3" | 3" | 3" | 3" |
| (10) Bituminous concrete | | | | |
| Lower base; | | | | |
| 12.5mm or 19mm | | | | |
| superpave | 2"-4" | 1 ^{3/4} "-2" | 1 1/2" | 1 1/2" |
| Top; 9.5mm or | | | | |
| 12.5mm superpave | 1 1/2" – 1 3/4" | 1 1/2" – 1 3/4" | 1 1/4" – 1 1/2" | 1 1/4" - 1 1/2" |
| (11) Minimum Underdrain | 4" | 4" | 4" | 4" |
| (12) Property line minimum | | | | |
| Radii at intersection | 20' | 20' | 20' | 20' |
| (13) Road crown minimum | 1/4"/ft. | 1/4"/ft. | 1/4"/ft. | 1/4"/ft. |
| (14) Curb radii at intersection | | | | |
| 90 degree intersection | 25' | 25' | 25' | 25' |
| Less than 90 degree intersection | 30' | 30' | 30' | 30' |
| (15) Sidewalks | | | | |
| Minimum width | 5' | 5' | 5.5' | 0 |
| Compacted gravel | | | | |
| base course | 12" | 12" | 12" | |
| Top | (Approval of City Engineer) | | | |

- (1) Streets and Future Planning. The street design must provide for proper continuation of streets from adjacent subdivisions and built-up areas. Street design must also provide for streets projected to lead into affected land and for future streets in conformance with the Comprehensive Plan.
- (a) Minor Streets. Minor streets must be designed to discourage through traffic.
 - (b) Street Intersections. There must be maximum centerline length of 500 feet between street intersections.
 - (c) Dead End Streets and Private Rights-of-Way. A dead-end street or private way shall have a maximum length of 800 feet with either a cul-de-sac with a minimum turning radius of 35 feet or a T-intersection utilizing a 30 foot x 30 foot hammerhead. A dead end street, either public or private, may not begin from any point along another existing or proposed dead end street. A private right of way may only be taken off a City Street, while a driveway may be taken off either a private right of way or a City street. (Ord. of 03-07-05)
 - (d) Street Construction over Ledge. Where street construction is over ledge, a minimum of 15 inches of compacted gravel is required for the sub-base. If deemed necessary, the City may require more than 15 inches of compacted gravel.
 - (e) Street Impact. The applicant is responsible for the assessment and improvement of other street systems that would suffer direct and continued impact from the proposed development. If the Planning Board finds it necessary, the applicant shall undertake to improve, repair, or reconstruct the street systems. This assessment will look at speed, volume, type of vehicles, peak periods and critical rate factors.
 - (f) Curbs. Granite curbing is required for all new streets.
 - (g) Sidewalks. All projects shall have an internal sidewalk system that makes connections to existing systems whenever possible.
 - (h) Pavement. Where Private Rights of Way and driveways connect with a City Street, the Private Right of Way or driveway must have a paved apron with a minimum depth and width of twenty (20) feet to reduce impacts to City Streets. (Ord. of 03-07-05; 4-5-10)
- D. Water Supply. Where it is proposed to connect the project with the public water supply, a water main of at least eight (8) inches in diameter is required. The main must be designed and installed with the approval of the Portland Water District. The cost of installation shall be borne by the applicant. During subdivision design, and prior to final plan submission, the applicant shall complete an analysis of water demand in accordance with community impact requirements.
- E. Sewage Disposal. One of the following requirements for sewage disposal must be met.
- (1) Off-site Disposal. Sewer lines not less than eight (8) inches in diameter must be designed for all off-site disposal. Final plan approval is subject to approval by the Portland Water District and the Public Works Department. The applicant must pay all costs of installation and analysis.

- (2) On-site Disposal. If the municipal sewer system is not available, a description of the proposed sewage disposal system is required. The testing for, and design of, this system must meet standards established by the State of Maine.
- (3) Communal Septic Systems. Communal septic systems are permitted for cluster housing developments only. Such systems shall meet all state and local requirements.

F. Storm Water Management, Groundwater Pollution and Erosion/Sedimentation Requirements.

- (1) Storm Water Management Plan. The storm water management plan must be included in the final plan application. The primary objective of the program is to limit peak discharge, after development, to equivalent levels before development. In the development of the plan, the following practices are required:
 - (a) Peak Discharge Measurement. Peak discharge must be measured for the 2, 10 and 25-year storm period. Estimation of the peak discharge and volume must be completed, using HydroCAD software based on the Department of Agriculture's TR-55 "Urban Hydrology for Small Watersheds" (1986) standards, as from time to time updated. The engineering design must include provisions for surface and subsurface runoff, especially where the displacement of surface and subsurface water is involved. Pre-construction and post-construction water flow estimates, and estimates of surrounding watershed impact and displacement of subsurface water are required.
 - (b) Reduction of Peak Discharge. In reducing peak storm water runoff so as to maintain pre-construction water flow levels, the management plan must include techniques to detain water on the proposed site by, but not limited to:
 - (i) Minimizing slope length through trenching and maintaining flat slopes where possible,
 - (ii) Infiltrating precipitation at the source prior to runoff, which may be accomplished by delaying runoff from flat roofs, utilizing stone drains for low water table soils, or precast concrete lattice blocks and bricks,
 - (iii) Increasing the flow length by using diversion ditches and level lip spreaders,
 - (iv) Infiltrating runoff after concentration in dry wells or trenches, natural swales or dugout basins, seepage beds or ditches, where there are low water flows,
 - (v) Delaying runoff by using detention ponds for short-term storage of runoff, or permanent retention ponds for long-term storage. Embankments for such ponds must have a slope ratio of no less than 4 units horizontal to one unit vertical.
 - (c) Construction Standards. In developing storm drainage plans, the following construction standards apply:

- (i) Shoulders beyond the pavement must be compacted and stabilized, and storm water runoff from adjoining properties and from the roadway must be conducted so that road shoulder embankments and pavement edges will not be undermined or eroded,
 - (ii) Storm drain culverts and conduits must be at least 12 inches in diameter or larger if required by the City,
 - (iii) Depending on conditions, storm drains must be laid with a cover depth of at least 24 inches,
 - (iv) Headwalls, catch basins, manholes and all other elements of the storm drain system must be constructed according to specifications approved by the Public Works Department. Catch basins must be located to accept drainage from all low points and sags in the roadway, and to prevent storm water from flowing along the gutters for more than 400 feet,
 - (v) Construction standards shall also incorporate methods by which contaminants in stormwater are removed prior to leaving the development site,
 - (vi) Best management practice standards shall be followed for the treatment of storm water quality such that all potential toxins or contaminants are removed before the storm water leaves the property.
 - (d) Improvement Costs. If the development depends upon storm water control which affects the existing system, whether natural or man-made, all costs of improvements shall be paid for by the applicant.
 - (e) Impact of Individual Lot Development. The developer shall set base elevations for individual foundations and identify on-site drainage paths to insure that subsequent development does not impede drainage, or result in excess stormwater on an individual lot.
- (2) Groundwater Pollution. The Planning Board shall require the applicant to demonstrate that there will be no adverse effect on subsurface water quality. The applicant may have to establish present water quality conditions and install a monitoring system. Standards for assessment will include nitrate loading.
- (3) Erosion and Sedimentation Plan. A subdivision plan must include a plan for erosion and sedimentation control during and after the construction period. The range of erosion and sedimentation control options to be incorporated in the plan is stated below. Any individual option or combination is acceptable, as long as it is considered in relation to the overall storm water management plan.
- (a) Prevention of Erosion Prevention of erosion on construction sites may be accomplished by, but not limited to:
 - (i) Minimizing the area of exposed fill, soil or subsoil, and the exposure time,
 - (ii) Seeding critical sediment-producing areas for a period of 2 to 12 months,

- (iii) Preserving vegetation at critical sediment-producing and sediment entrapment locations,
 - (iv) Using contoured cross-slope ground preparation by roto-tilling, harrowing, fertilizer spreading, or hydro-fertilizing and seeding.
 - (v) Utilizing erosion controls applicable to road construction and construction sites,
 - (vi) Installing temporary graded channels with ridges on the downhill side to intercept surface water that may be used in conjunction with temporary chutes or flexible downdrails,
 - (vii) Installing temporary checkdams on all waterways draining more than one half acre of land under construction by using straw bale checks with filter fabric fence; filter fabric fence alone or filter fabric fence with wire fence, or other device deemed appropriate by the City.
- (b) Fine Grained Sediment. The applicant shall use a combination of sediment basins, filter fences, vegetation, tillage, top-soiling or crushed stone or gravel in controlling fine-grained sediment,
 - (c) Entrapment and disposal of sediment from runoff prior to discharge. For entrapment, the applicant may use existing vegetation, sediment basins, and sediment traps. Trapped materials may be used for topsoil or fill for the project,
 - (d) Stabilization of critical areas. In order to prevent erosion, the stabilization of critical areas using mulching, sod, existing vegetation, or new vegetation is required,
 - (e) Design and stabilization of drainage channels. The plan must provide for the design and stabilization of drainage channels. Channel construction may include grassed water ways, rip-rap and permanent diversions to reduce velocity. Design should also incorporate structures at pipe conduit outlets to de-energize water movement, such as plunge pools, aprons or level lip spreaders. Any plan for drainage channels should include a program for maintenance,
 - (f) Stabilization of stream channels and banks. The program must provide for the protection of existing stream channels, by utilizing vegetation, riprap, obstruction removal, banksloping, or other acceptable method,
 - (g) Removal of excess subsurface water. Where appropriate, the use of subsurface water storage is required. High water tables in the City will require designs which address points of discharge, storage capacity, and potential impact,
 - (h) Revegetation. The applicant must include a plan for the preservation of existing vegetation, selective clearing, and re-vegetation as part of the erosion and sedimentation control plan.

G. Utility Easements. All utilities shall be underground. Easements for utilities at least 15 feet wide must be provided, either within or outside the subdivision. The applicant is required to install underground conduits and other necessary subsurface structures to provide underground power, internet, phone service, and other telecommunications services including, but not limited to television cable,

throughout the subdivision. Underground structures must be constructed according to the requirements of the appropriate utility company.

502.6 Additional Requirements.

A. Public Open Space:

- (1) Reservation of Land. The Planning Board shall require the reservation of land for parks, playgrounds, or conservation areas to benefit the residents of the proposed development. The reserved land must be of suitable dimension, topography, and general character for the proposed recreational use and must be reasonably accessible to residents of the development. It must be designated on the plan as "Reserved for Conservation or Recreation Purposes". The area to be reserved must be determined according to the following table:

| <u>Average Size of Single Family Lots</u> | <u>Percentage of Development Tract to be Reserved for Recreation Purposes</u> |
|---|---|
| 80,000 S.F. or greater | 1.6% |
| 40,000 S.F. | 3.3% |
| 20,000 S.F. | 6.5% |
| 15,000 S.F. | 8.7% |
| 10,000 S.F. or less | 13.02% |
| Multiple Family Units | 300 S.F. per unit |

The applicant shall improve reserved land according to the requirements of the Planning Board. In determining these requirements, the Board shall consider the Comprehensive Plan, and the long-range plans and recommendations of the Recreation and Conservation Commission.

- (2) Fee in lieu of land. Where a developed conservation or recreation area exists near a proposed subdivision, an applicant may make a cash contribution to the City, in lieu of land reservation for the purpose of further improving the recreational area to benefit the proposed development. The contribution must equal the per acre value of an undeveloped housing site, as set by a disinterested appraiser who is satisfactory to the Planning Board, multiplied by the required area for reservation according to the table above. The funds must be used for improvement of the recreation or conservation area, as mutually agreed by the applicant and the Planning Board, and placed into a dedicated account for the agreed upon recreation or conservation purpose.
- (3) Recreation Land Ownership. As soon as the use of the recreation or conservation land has been established, the means of future ownership and control must be determined. The following alternatives are available, as agreed upon by the applicant and the Planning Board:

- (a) The land may be held and maintained in common by the future owners of the development, under the by-laws of a homeowners' association, as approved by the Planning Board.
- (b) It may be held and maintained in perpetuity by a conservation trust or other suitable private organization. It may be deeded to the City for future maintenance and improvement, if acceptable to the City.

B. Performance Guarantee. As a condition of final approval for subdivision, the applicant, in accordance with the conditions of the final approval, must file a performance guarantee with the City. Prior to the start of any construction, the applicant shall deliver either a certified check payable to the City, a performance bond running to the City, or a letter of credit running to the City in amount and form acceptable to the City. The check, bond or letter of credit must equal at least the total cost of furnishing, installing, connecting and completing all appropriate construction items within 2 years of its date. Appropriate construction items includes, but is not limited to, all public infrastructure items such as roads, sidewalks, utilities, recreation facilities. (Ord. of 03-07-05)

(1) Release of Check or Guarantee. Before releasing a check or bond the City must obtain the following:

- (a) A statement by the Public Works Department that all street and storm drain systems have been constructed and completed in conformance with the Final Plan,
- (b) A statement by the Westbrook Engineer, that all sewage disposal systems have been constructed and completed in conformance with the Final Plan,
- (c) A statement by the Superintendent of the Portland Water District that all water mains and hydrants have been installed and completed in conformance with the Final Plan,
- (d) A statement by a land surveyor, registered in the State of Maine, that all permanent boundary monuments on street and lot lines have been installed in the locations designated on the Final Plan. The cost of obtaining this statement shall be borne by the applicant. In releasing the check or bond, the City shall provide the applicant with a certificate of compliance. At the discretion of the Department, a phased release of the check or bond can be implemented.
- (e) An affidavit from the applicant confirming that all construction bills, and other monies and credits owed as a result of the development activity have been paid to their respective parties.

(2) Conditional Agreement. The applicant may substitute for the performance guarantee a conditional agreement with the City. The agreement must be described on the final plan and must include the conditions that:

- (i) No lot in the subdivision may be sold, and

- (ii) The Code Enforcement Officer shall not issue a building permit for the construction of a building on any lot in the subdivision until a certificate of compliance is issued.

C. Driveway Access to Subdivision Lots. If excessive slopes, sharp curves or other safety factors exist, the applicant shall show planned driveway entrances onto streets shown on the final plan. Additionally, the Board may require that driveways be shared.

D. Monuments. The following permanent reference monuments must be installed:

- (1) Granite. At all street corners and angles, granite reference monuments must be at least four (4) feet long, four (4) inches square in width, have #6 rebar in their center, and have no more or less than six (6) inches, give or take an inch, exposed above the ground.
- (2) Iron. Along all lot lines, #6 rebar iron reinforcement rods must be installed at 100 foot intervals, must be at least four (4) feet long, and must have no more or less than six (6) inches, give or take an inch, exposed above the ground.

E. Water Course Easement. The Planning Board may require easements, established under, and maintained by a homeowner's association, or in their absence an environmental agency, for the protection of natural water courses. These easements must be at least 20-feet wide and described on the final plan. Where improvements to natural water courses are required, all costs shall be paid by the applicant.

F. Special Flood Hazards Area. The applicant must show that land designated as 'Special Flood Hazard Area' on the flood insurance rate maps meets the following requirements:

- (1) Proposed Land Use. That the proposed land use will not experience flood damage,
- (2) Utility System. That all proposed public and private utility systems are constructed by the applicant to minimize or eliminate flood damage,
- (3) Drainage Plans. That the drainage to be provided is adequate to reduce exposure to flood hazards.

Preliminary information concerning special flood hazard areas may be drawn from Flood Insurance Rate Maps. The applicant must provide flood elevation data and show engineering justification when identifying the location of the special flood hazard area.

G. Appearance Assessment. In preparing the final plan, the applicant shall incorporate the criteria in Sections 502.4.G.1 – 6 to ensure the harmonious relationship of the project to surrounding properties, buildings, and natural features. The following factors must be considered:

- (1) Relationship of Project to Site. The plan must provide for smooth transitions between the streetscape, driveway entrances, and project landscaping. Height and scale of proposed structures must be consistent with existing structures.
- (2) Relationship of Project to Surrounding Property. The plan must provide for smooth transitions between land, proposed structures, and surrounding properties. Compatible transitions may be achieved by utilizing screening materials, landscaping, and natural topography.
- (3) Relationship of Landscape Design. Landscape design must include all forms of planting and vegetation, including existing vegetation, topography, water patterns, and utilitarian structures such as, but not limited to, fencing and curbing. Wherever practicable, the applicant shall maintain existing topography and vegetation. Landscaping must provide a transition between buildings, parking, and pedestrian walkways, while breaking up long open areas and traffic patterns. Suitable plant material must be selected according to its structure, texture, color, ultimate growth, and hardness. It must be protected through appropriate buffer to avoid damage where vegetation is used for screening purposes, it must be equally effective in winter and summer. The design may provide for the use of materials such as fences, walls and a variety of paving types where there is difficulty in achieving vegetative growth.
- (4) Relationship of Lighting to Project. The design, type, and location of street lighting are to be reviewed. The lighting materials must blend with the overall project scheme enhancing design and landscaping. Standards and fixtures must be compatible with surrounding developments and, if maintained by a public utility, meet their requirements. Excessive brightness must be avoided and lighting must be confined to areas in accordance with this Ordinance.
- (5) Relationship of Signs to the Project. Sign installation or modification must conform to this Ordinance. Sign materials and design must be an integrated element of the overall site plan and must blend with proposed landscaping. Signing must be compatible with surrounding properties and not obstruct or interfere with the vision of drivers.
- (6) Village Review Structure. Where a structure lies within the Village Review Zone, the applicant must incorporate the standards of the Village Review Zone.

H. Community Facilities Impact Analysis. The Planning Board may require the applicant to conduct a community facilities impact analysis that will consider the following demographic features:

- (1) **Demographic Description.** The analysis must identify the demographic market the project intends to serve, including: (1) type of family; (2) average family size; (3) numbers and ages of children; (4) anticipated time period to fill all units or lots. Associated data, such as anticipated family income levels, type of employment, and projected housing costs may also be presented to support projections associated with the above demographic description. If transfers from existing City families and homes are expected, the impact on the secondary market must be projected. The basis for all projections must be provided.
- (2) **Community Facilities Impact Analysis.** Utilizing the above demographic data, the applicant shall conduct analyses of the following:
 - (a) Estimated impact on the sewage disposal system, including flow estimates and assessment of capacity,
 - (b) Estimated impact on the water system, including flow estimates, capacity and assessment of existing or potential water pressure,
 - (c) Estimated impact on traffic systems, including the impact of projected trips on flow characteristics and the impact of traffic on the existing road structures within a reasonably determined distance from the subdivision,
 - (d) Estimated impact on the school system,
 - (e) Estimated impact on public safety providers,
 - (f) Estimated impact on the public works department, including solid waste disposal,
 - (g) Estimated impact on existing storm water management systems, including flow and water quality,
 - (h) Estimated impact on the recreation resources and provisions of methods to meet proposed needs,
 - (i) Any other study deemed appropriate by the Planning Board.

Once these analyses have been completed, the applicant shall present appropriate projections and impact assessments to the appropriate City agency for review and comment.

I. *Reserved.* (Ord. of 11-17-14)

J. The Planning Board may make additional requirements concerning trees, esplanades, public walks, driveways, and similar public improvements that must be included in the final plan.

(Ord. of 4-5-10)

502.7 Solar Access Requirements. An applicant must take into consideration the solar orientation of proposed housing units. In planning for solar contingencies, the applicant shall consider the following:

- E. Southerly Exposure. When practicable, the project must utilize southerly exposure and topography in lot layouts and building locations. Higher densities should be oriented towards southerly exposures.
- F. Building Design. Where the review of building elevations is appropriate, the applicant shall incorporate into the building design a balanced solar exposure. The applicant shall identify building techniques designed to minimize energy costs and shall consider the height and impact on adjacent buildings.
- G. Landscape Design. Landscape plans must include a reference to the vegetative impact on exposure, solar access during colder periods and shade potentials during warmer periods. The design, height, and canopy for all trees shall be taken into consideration.

502.8 **Findings of Fact.** Prior to granting approval, the Planning Board shall make its findings of fact based on the information provided above. The findings shall address the following areas:

- A. POLLUTION AND SEWERAGE DISPOSAL
- B. WATER
- C. SOIL EROSION
- D. TRAFFIC
- E. SEWERAGE
 - Septic systems are proposed.
 - Municipal sewerage is proposed.
- F. SOLID WASTE
- G. AESTHETICS
- H. CONFORMITY WITH LOCAL PLANS AND ORDINANCES
- I. FINANCIAL AND TECHNICAL CAPACITY
- J. RIVER, STREAM OR BROOK IMPACTS

CONCLUSIONS

1. The proposed site plan **will/will not** result in undue water or air pollution.
2. The proposed site plan **has/has not** sufficient water available for the reasonably foreseeable needs of the site plan.

3. The proposed site plan **will/will not** cause an unreasonable burden on an existing water supply.
4. The proposed site plan **will/will not** cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
5. The proposed site plan **will/will not** cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.
6. The proposed site plan **will/will not** provide for adequate sewage waste disposal.
7. The proposed site plan **will/will not** cause an unreasonable burden on the municipality's ability to dispose of solid waste.
8. The proposed site plan **will/will not** have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
9. The proposed site plan **conforms/does not conform** with a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.
10. The developer **has/does not have** adequate financial and technical capacity to meet standards of this section.
11. The proposed site plan **is/is not** situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, subchapter I, article 2-B M.R.S.A.
12. The proposed site plan **will/will not** alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
13. The proposed site **is/is not** situated entirely or partially within a floodplain.
14. All freshwater wetlands **have/have not** been shown on the site plan.
15. Any river, stream, or brook within or abutting the site plan **has/has not** been identified on any maps submitted as part of the application.
16. The proposed site plan **will/will not** provide for adequate storm water management.
17. The proposed plan **will/will not** negatively impact the ability of the City to provide public safety services.
18. Any other finding made by the Board not found above, but particular to the unique qualities of a given application.

504 Site Plan Review Requirements and General Provisions.

- 504.1 **Purpose.** The site plan review process is designed to ensure that a given project fits harmoniously with surrounding properties. Site plan review insures that public infrastructure is adequate enough to absorb the impacts of new or expanded developments by requiring the applicant to make such improvements prior to moving forward. Site plan review applies to the development proposals for new or altered, within a five (5) year period, commercial, retail, industrial, and institutional structures, and multiple family dwellings consisting of three or more attached dwelling units and their accessory uses and structures, whether or not the development includes subdivision or re-subdivision of the site. Site plan review is not required for detached single and two-family dwelling units, agricultural and forest management practices, physical expansions or alterations of 3,000 square feet or less. Site plan review does not include clear cutting of timber, land filling, soil removal or impacts to wetlands; however, an application for such activities shall be made to and approved by the Code Enforcement Officer in accordance with Chapter VI of this Ordinance.
- 504.2 **Authority.** The authority over site plan review is vested in the Westbrook Planning Board.
- 504.3 **No Building Permit without Site Plan Approval; Required Mylar Submission.** The Code Enforcement Officer shall not issue any permits until a site plan has been approved by the Planning Board and a Mylar signed by the Planning Board. Mylars must be submitted to the City within 90 days of Planning Board approval or the approval shall be null and void.
- 504.3.1 **Exemptions from Site Plan Review.** No person shall undertake any development without obtaining approval therefore under this chapter (Section 504). An exemption from site plan review does not exempt this proposal from other approvals or permits, nor is it an authorization for construction. The Code Enforcement Officer will determine what other permits, such as a building permit, are to be required. A person seeking approval under this section shall submit a completed application form and shall include a plan that shows the proposed changes and the existing conditions and a detailed statement of how the proposed changes meet the criteria of this section. The applicant shall be responsible for paying the application fee set forth in the Master Fee Schedule attached hereto as Appendix B.

The Planning Department shall apply the following criteria to its review of any proposed change(s) to an approved site plan. Any proposed change(s) must meet all of the following requirements:

- a. The site plan was approved since adoption of this ordinance (adopted 2/9/2004) and has obtained no more than two administrative change approvals;
- b. The proposed change(s) would be located within existing structures, and there would be no demolitions, or building expansions other than those permitted by subsection c of this section;

- c. Any necessary building expansion would have an increased maximum gross density factor of no greater than five (5) percent, there would be no increase in the number of dwelling units and the proposed change(s) would require a minimal increase in paved surfaces;
- d. The proposed change(s) would not add curb cuts or driveways; would not disrupt the circulation and parking on-site; and would add no drive-thru services;
- e. The curbs and sidewalks adjacent to the lot shall meet minimum requirements and shall be in sound condition and sidewalks in good repair with uniform material and level surface and meet the accessibility requirements of the Americans with Disabilities Act;
- f. The proposed change(s) would not increase parking demands as determined by Section 505.1 or traffic generation as determined by the International Traffic Engineers Trip Generation Manual, latest edition and would result in no significant increase in hours of operation;
- g. The proposed change(s) would not increase stormwater impacts to the site or to adjoining properties;
- h. The proposed change(s) would not reduce screening from adjoining properties and would not reduce the amount, intent or quality of landscaping; and
- i. The proposed change(s) would not increase demand on public or private utilities and would pose no disturbance or require improvements within the public right-of-way.

Based on its review of the proposed change(s) the Planning Department may:

- a. Grant administrative approval of the proposed change, with or without conditions;
- b. Place the item on the consent agenda for Planning Board approval; or
- c. Determine that the proposed change is not minor and requires Planning Board approval of a site plan amendment application.

Changes to aspects of the approved site plan that were at issue during the approval process may require approval of a site plan amendment. Changes to any condition of approval placed by the Planning Board during its approval will require review and approval by the Planning Board and cannot be approved under this section.
(Ord. of 6-1-09; 6-22-09)

504.4 Sketch Plan Submission Requirements. The following information is required for sketch plan submission:

- A. Project name, applicant, and designer,
- B. Date, north point, scale,
- C. Perimeter boundary, area of proposed development and preliminary building footprints, areas reserved for future development,
- D. Tentative rights of way locations, lot lines, lot numbers, acreage,
- E. Estimated soil boundary locations from the U.S.A.D.A./S.C.S medium-intensity soil survey noting areas of severe and very severe soil limitations,
- F. Land cover areas, (e.g. woods, fields),
- G. Topographic features: areas of steep slopes, bedrock outcrops, ponds, streams, aquifers, aquifer groundwater recharge areas, floodplains, and

- H. Tentative location of proposed structures in relationship to owners of existing structures, and neighboring land uses,
- I. Non-refundable Sketch Plan application fee in the amount established by the City Council.

(Ord. of 03-07-05; 11-17-14))

504.5 **Final Plan Submission Requirements.** The following information is required for final plan submission:

A. Application Information. An applicant for site plan review shall submit the following as part of the final plan.

- (1) Project name,
- (2) Name, address, phone number of applicant,
- (3) Name, address, phone number of owner,
- (4) Name, address, phone number of authorized representative,
- (5) Name, registration number, address, phone number of engineer, surveyor, architect, landscape architect or planner,
- (6) Interest of applicant in property and abutting property,
- (7) Tax map and tax numbers,
- (8) Acreage to be developed,
- (9) Acreage of the site,
- (10) Covenants deed restrictions, easements, or rights of way existing or planned,
- (11) Existing use of the property,
- (12) Variances requested of the Zoning Board of Appeals,
- (13) Construction schedule, costs and performance guarantee arrangement, along with appropriate statements of proof of financial capability and a statement of relationship between developer, design consultant and project contractor,
- (14) Electronic copy. An electronic copy of all application materials shall be submitted with the initial and each subsequent submission. This shall be in a file format acceptable to the City Planner.
- (15) Non-refundable Final Plan application fee in an amount established by the City Council, and
- (16) If a public hearing is scheduled, the applicant must pay notification and advertising costs.

(Ord. of 11-17-14)

B. Map Requirements. The Site Plan Map must consist of 15 blueprints to be retained by the City, with a maximum size of 30"x40" and at a scale that is appropriate for the size of the project, level of detail involved, and needs of the reviewer(s).

- (1) Date, title, scale, north arrow, name of project,
- (2) A boundary outline with dimensions and lot area, in relation to surrounding streets, walls and adjoining land and land uses,
- (3) Names and addresses of present landowners and abutting landowners,

- (4) Locations of existing buildings and other structures, fire hydrants, street lights, utility poles, underground water and sewer facilities, existing trees greater than 10" in diameter on property less than one acre in size OR areas of tree save and other natural landscape features on property one acre or more and any other utilities on the site,
- (5) Preliminary design drawings of site plans, floor plans, elevations in sufficient detail to show access, layout and building construction or modification,
- (6) Location and dimension of all proposed buildings, and private and public utilities.
- (7) Location map,
- (8) Performance bond or conditional agreement, as required by the Planning Board.
- (9) All necessary easements, shown on plan,
- (10) Accurate dimensions of streets, right-of-ways, width of pavement, parking, loading and associated curbing,
- (11) Identification of soils with severe or very severe limitations for the type of development proposed in accordance with the U.S.D.A.S.C.S medium intensity soil survey for Cumberland County, the location of any sand and gravel aquifer and aquifer recharge area, and any wetland area as defined by DEP and Army Corp of Engineer requirements,
- (12) Digital Transfer of any site plan data in GIS format on the City's Horizontal Datum: Maine Stateplane Coordinate System: Maine West Zone 4101, FIPS Zone 1802, North American Datum 1983; Units: Feet; Vertical Datum: National Geodetic Vertical Datum, 1929,
- (13) Digital Transfer on a compact disc (CD) of any site plan data in Computer Aided Design (CAD) format as a .dwg file,
- (14) Zoning requirements, proposed project dimension calculations in relation to existing zoning standards.
- (15) Eight (8) copies (on 11x17 sized paper) of the overall site plan sheet for review by the Recreation and Conservation Committee.
(Ord. of 03-07-05)

C. Supporting Documents. Any of the following sketches or plans may be combined in one plan for presentation purposes:

- (1) Site plan showing existing natural and topographical features including watercourses and waterbodies, trees and other vegetation, and any other pertinent features,
- (2) A plan of all buildings with new construction or expansion of an existing facility, including type, size, and footprint, floor layout, setback, elevation of first floor slab, storage and loading areas,
- (3) An elevation view of all buildings indicating their height, color, bulk, surface treatment, and signs attached to buildings,
- (4) A circulation plan noting all pedestrian and vehicle traffic flow, both within the development and in terms of ingress and egress impact on surrounding road systems,

- (5) The size and proposed location of water supply and sewage disposal systems and provision for future expansion of those systems,
- (6) A landscaping plan indicating grade change, vegetation to be preserved, new plantings used to stabilize areas of cut and till and screening; the size, location, purpose, type of vegetation, and number of planting categorized by the type of plant.
- (7) A drainage plan, including location, elevation, layout of catch basins, stormwater retention or detention area, and other surface and subsurface drainage features,
- (8) A topographical plan, at 2-foot intervals, showing existing and proposed contours and finished grade elevations,
- (9) Any other exhibits or data deemed necessary by the Planning Board to evaluate the proposed development for site plan review purposes,
- (10) Statements from the following officials:
 - (a) The Portland Water District as to the conditions under which the District will supply water and sewage removal, approval of the size and location of mains, valves and hydrants proposed, and the approval of and required pre-treatment facility. If septic is to be used, a statement from the plumbing inspector that the system is adequately designed to serve the facility,
 - (b) The Fire Chief approving the safety features related to fire and emergency protection,
 - (c) The City Engineer regarding the adequacy and design of drainage and street systems, both proposed and existing,
 - (d) The Police Chief relative to traffic circulation,
 - (e) Where the use may involve the production of a substantial amount of waste, the applicant shall request review by the Director of Public Works for an appropriate recycling plan,
 - (f) Director of the public transit authority regarding the potential to serve the site, and how internal circulation for public transit vehicles will be provided,
 - (g) Any other agency or committee deemed appropriate by the Planning Board.

504.6 **Dual Reviews.** Where the development also involves subdivision, all appropriate subdivision standards apply. The review process for both may occur at the same time. All special exception uses shall be required to receive Planning Board approval during the subdivision or site plan review process.

505 Site Plan Review Design and Performance Standards.

The design and performance standards for site plan review are as follows:

505.1 Parking and Circulation.

- A. Table of Off-Street Parking. The following minimum parking requirements apply unless the zoning for a particular district provides otherwise.

Table of Off-Street Parking

| Principal Use | Number of Spaces |
|---------------------------------|--|
| Single Family and Duplex | 2 per unit |
| Efficiency Units/Multi-Family | 1 per unit |
| 1-2 bedrooms/Multi-Family | 1.5 per unit |
| 3 or more bedrooms/Multi-Family | 2 per unit |
| Hospital | 1.2 per employee/largest shift |
| Theatre/Stadium | 0.3 per seat |
| Restaurant | 0.3 per seat |
| Industrial | 0.6 per employee at the largest shift |
| Church | 0.3 per seat |
| College | 0.5 per student |
| College Housing | 1 per two beds |
| General Retail | 6 per 1000 S.F. of sales area |
| Offices,Banks,Funeral Homes | 5 per 1000 S.F. |
| Major Retail Center | 5.5 per 1000 S.F. |
| Hotels,Motels,Boarding Houses | 1 per rented room and 0.5 per employee |
| Inn, Boarding Houses | 1 per rented room and 2 for the owner |
| Elementary/Junior High School | 1.3 per classroom |
| Senior High School | 1 per staff plus 1 per 5 students |
| Medical Offices | 4 per 1000 S.F. |
| Auto Sales and Service | 1.5 per 100 S.F. |
| Bowling Alleys | 4.2 per lane |
| Sanitariums/Nursing Homes | 1 per 3 rooms plus 1 per employee |
| Drive-in Window Services | 8 stacking spaces for 1 st window, and 2 per additional window |
| Other Commercial or Business | 1 per 250 S.F. |

- B. Design of Off-Street Parking.** Each off-street parking area must be designed with adequate access, turning radii, and snow storage areas in addition to the following minimum standards:

| Parking Angle | Stall Width | Skew Width | Stall Depth | Aisle Width |
|---------------|-------------|------------|-------------|---------------|
| 90° | 9'0" | 0" | 18'5" | 24'0" |
| 60° | 8'6" | 10'5" | 19'0" | (1 way) 16'0" |
| 45° | 8'6" | 12'9" | 17'5" | (1 way) 12'0" |
| 30° | 8'6" | 17'0" | 17'5" | 12'0" |

C. Parking On and Off Site

On-Site Parking Facilities. Except as provided in subsection (2), parking must be provided on the lot occupied by the use to which the space is appurtenant.

Off-Site Parking Facilities. Parking may be located off-site if it is located so that it will adequately service the use for which it is intended. In making this determination under site plan review, the Planning Board shall consider the following factors:

The proximity of the off site parking,

Ease of pedestrian access to the off-site parking including any necessary improvements,

The legal interest of the applicant in the land for which the off site parking is proposed. The applicant must have a legally sufficient interest to establish control as long as the use exists.

- D. Parking Required for Each Use.** Where multiple use occurs, on-site parking facilities or loading bays must be provided in accordance with the standards above and below, respectively, except where the applicant can show through a parking study that each use has different operating hours, so that the peak period parking demand is non-conflicting. Non-conflicting periods may consist of daytime as opposed to evening hours of operation or weekday as opposed to weekend hours of operation. Where the applicant can demonstrate non-conflicting periods of use, the Planning Board may grant approval for shared use of parking spaces.

- E. Screening.** All parking may be screened from adjacent properties with either fencing or natural materials. In making this determination the Planning Board shall take the need of the abutters into consideration.

- F. Circulation.** The layout and design of all means of on-site pedestrian and vehicular traffic must provide for safe circulation.

G. Loading Facilities. Following is the Table of minimum Off-Street Loading Space Requirements.

| Number of Loading Bays Required for New Structures | | | | | |
|---|---|------|--------|---------|---------------|
| Type of Use | <u>Gross Floor Area of Structure (in thousands of S.F.)</u> | | | | |
| | 1-7 | 8-24 | 25-100 | 101-250 | Each 250 add. |
| Commercial & Industrial Uses. | 1 | 2 | 3 | 4 | 1 |
| Institutional, Office Buildings, Hotels, Residential. | 1 | 1 | 1 | 3 | 1 |
| Truck Terminals & Storage (Dependent on facility) | 15 bays/ 100,000 S.F. of gross floor area | | | | |

H. Size of Loading Areas. Each truck-loading bay must be between 12 and 14-feet wide depending on conditions of ingress and egress. Access to the bay must include a minimum maneuvering area of 125 feet in length, or more where required. The bay area must be long enough to accommodate standing trucks so as to remove them from the flow of traffic. All loading bays must be screened, with areas for trucks to park in when waiting for loading activities.

I. Planning Board Discretion. The Planning Board may relax or expand any of the requirements in Section 505.1 in the case of site plan review if the applicant can describe statistically how its operation will require a different treatment.

(Ord. of 4-5-10)

505.2 **Vehicular Access.** The site layout must provide for safe ingress and egress to and from public and private roads by requiring adequate location, numbers and control of access points including site distance, turning lanes, and traffic signals if necessary. The Planning Board may also require a study showing the existing and projected levels of service for entrances and intersections that are substantially affected by the proposed development. The project's design must also provide for the best possible access for public safety and health personnel and vehicles.

505.3 **Storm Water Management, Groundwater Pollution and Erosion and Sedimentation Requirements.** In designing a storm water management plan, groundwater pollution plan, and erosion and sedimentation plan, the applicant must observe the standards described in Westbrook's subdivision ordinance.

- 505.4 **Municipal Services and Utilities.** The development shall not exceed the capacity of utilities such as sewer, storm drains and water lines or on municipal services such as, but not limited to, fire, police, solid waste disposal, or other services. Any improvement costs required as a result of this impact, shall be borne by the applicant.
- 505.5 **Utility and Road Standards.** Standard requirements for water, sewer, storm drainage systems and street construction, where applicable, shall be the same as those required in subdivision ordinance. The Planning Board reserves the right to increase those minimum standards where it is deemed necessary. All utilities shall be underground.
- 505.6 **Hazardous Matter.** For any toxic or hazardous waste storage, consistent DEP definitions, the Planning Board may require:
- Environmental Evaluation. An environmental evaluation of geologic, hydrologic, and soils conditions of the site in question,
- Description of Wastes. A description of wastes to be stored, the manner in which they are to be stored and the manner of removal,
- Ground water quality. A background establishing existing ground water quality around the site, and a system to monitor any changes should contamination occur,
- Other Provisions. The findings and use of hazardous matter must be shown to be consistent with other provisions of this Ordinance.
- 505.7 **Odors.** Odorous matter released from any operation or activity shall be controlled in accordance with the provisions of this ordinance. In addressing changes in odors as a result to the Board may require the applicant to establish pre- and post-development odor threshold levels. Any measurement conducted shall be conducted in accordance with the "Standard Method for Measurement of Odor in Atmosphere" or the "Dilution Method," as developed by the American Society for Testing and Materials. The Board shall act as the observer in this assessment.
- 505.8 **Noise.** Adequate provision must be made to control unnecessary noise from and at the site in accordance with the standards for each zoning district in this Ordinance. The Planning Board may require the applicant to establish pre and post-construction noise levels.
- 505.9 **Vibrations.** Adequate provision must be made to control vibrations in accordance with the standards for each zoning district in this Ordinance. The Planning Board may require the applicant to establish pre and post-construction vibration levels.

505.10 **Unique Features.** Adequate provision must be made to mitigate adverse impact on existing scenic or natural beauty, rare or irreplaceable historic sites, or other features of importance to the City.

505.11 **Reserved**

505.12 **Reserved**

505.13 **Purpose.** The purpose of this section of the Site Plan Review Ordinance is to ensure that commercial/retail development in the Gateway District is compatible with adjacent residential neighborhoods.

505.13.1 **Applicability.** The additional standards in this subsection 505.13 must be met when a commercial or retail development, but not an industrial use, is proposed in the Gateway Commercial District that:

- A. Is situated on a parcel of land that is within 500 ft. of a residentially zoned occupied property at the time the development's site plan receives its first substantive review, as defined in 1 M.R.S.A. § 302, and
- B. Is situated on a parcel or combination of parcels greater than 10 acres.
- C. Projects in a common scheme of development within 500 ft. of a residentially zoned occupied property shall also be subject to the provisions of subsection 505.13.

If the provisions of this subsection conflict with any other provisions in this ordinance, the more restrictive provision shall govern; further, no waivers of the provisions of this subsection may be granted. However, alternatives may be considered by the Planning Board on a case-by-case basis when the applicant demonstrates that the alternative is consistent with and effectuates the intent of the subsection proposed to be altered. Alternatives may not be considered for any retail project which seeks to operate 24 hours per day and/or requires a Maine DOT Traffic Movement Permit.

505.13.2 **Definitions.** Items defined in Section 201 of the Land Use Ordinances apply to all terms in Section 505.13. In the case of conflict, the definitions in this section will apply to terms in Section 505.13.

Common Scheme of Development: A plan or process of development which:

- A. Takes place on contiguous or non-contiguous parcels or lots in the same immediate vicinity; and
- B. Exhibits characteristics of a unified approach, method, or effect such as:
 - (1) unified ownership, management, or supervision;
 - (2) sharing of common equipment or labor; or
 - (3) common financing.

Decibel: The practical unit of measurement for sound pressure level, abbreviated dB. The abbreviated dB(A) shall refer to readings taken on the A-weighted scale.

Earthen Berms: A mound comprised of clean fill or rock that is at a minimum covered with loam and seed. Berms may have trees and shrubs planted on them to increase their efficiency in visual and audio screening.

Residentially zoned occupied property: A parcel or parcels of land in a Residential Growth Area 1, Residential Growth Area 2, or Residential Growth Area 3 zone of the city on which one or more residences are established.

Visual Screening: The combination of buffer materials that block the development site from view.

505.13.3 Standards

- A. Buffering: In addition to any other buffering requirements in this ordinance, uses governed by this subsection shall provide buffering and screening between the proposed use and all abutting residentially zoned occupied property. The types of screening include, but are not limited to, earthen berms, vegetation with year-round foliage, and sound barrier walls – all of which are subject to the approval of the Planning Board based on materials and design. The approved buffering system must be installed prior to the issuance of any permanent occupancy permit, and the Planning Board may require installation of some or all of the buffering prior to demolition or site preparation where reasonably necessary to protect the health and safety of surrounding residentially improved properties.

The Planning Board shall review the buffering/screening system in accordance with the following standards:

(1) Space and Bulk Standards

- (a) Minimum height: Buffering/screening must be at least 10 feet high as measured from the existing ground level as established prior to the beginning of grading, excavation or construction, but in no case be less than 10 feet above finished grade;
- (b) Minimum width: A buffer of at least 150 feet as measured from the lot line of the proposed development must be maintained between the proposed building and any residentially zoned occupied property. If the proposed buffering utilizes plantings or earthen berms, these must be placed within the 150' buffer in a location that maximizes screening.
- (c) Minimum length: The buffer zone and all screening within it must be continuous in the area between the proposed site and any residentially zoned occupied property. A gap may be allowed in the buffering for the sole purpose of emergency vehicle access, provided that the gap shall be limited to the minimum necessary for such access.

(2) Performance

- (a) Visual Screening: The buffering must provide complete visual screening of the proposed development, including, but not limited to, any buildings, roof-top equipment, loading areas, parking areas, light poles and other light fixtures. The measurement of the visual screening will be taken from the property line of all abutting residentially zoned occupied property at an elevation at least 5 feet above ground level.

- (i) As part of the site plan application submission, the applicant must provide photo-simulations. The simulations must show the view from at least one (1) vantage point along each property line of the development site that abuts residentially zoned occupied property.
 - (ii) After the visual screen has been installed, the Code Enforcement Officer must make a positive determination that complete visual screening has been achieved at all points along the property line(s) where residentially zoned occupied property abuts. A gap may be allowed in the visual screening for the sole purpose of emergency vehicle access, provided that the gap shall be limited to the minimum necessary width for such access.
- (b) Lighting: The buffering system must limit the spill of artificial light onto abutting residentially zoned occupied property based on the standards of this subsection:
 - (i) A study, submitted by a recognized lighting specialist or engineer, must demonstrate that the buffer and screening will minimize the spill of lighting off-site to no more than [0.2 foot-candles] in any location, and that no artificial light will spill onto any adjacent residentially zoned occupied property,
 - (ii) Lighting must minimize “night glow” by using the lowest wattage possible and have an amber hue,
 - (iii) Fixtures must be 90 degree cutoffs and no portion of the bulb or its glass shield shall extend below the bottom of the lighting case,
 - (iv) Lighting affixed to any exterior wall facing abutting properties must be downshielded so that no light directly spills onto adjacent parcels.
- (c) Noise: The buffer or screening system must limit the decibel level of all sounds or noise that reach the property line abutting residentially zoned occupied property to the following levels, and at the following times:
 - (i) During daytime hours (6 am – 6 pm) – 60 dB(A)
 - (ii) During nighttime hours (6 pm – 6 am) – 50 dB(A)
 - (iii) Weekend hours Saturday – Sunday (9 am – 6 pm) daytime hours – 60 dB(A)
 - (iv) Weekend hours Sat. – Sun. nighttime hours(6 pm – 9 am) – 50 dB(A)
- (c.1) Exceptions: The following sources of noise shall be excluded from meeting these standards:
 - (i) Natural phenomena.
 - (ii) Any siren, whistle, or bell lawfully used on the premises in an emergency situation, provided that burglar alarms are terminated within thirty (30) minutes of activation.

- (iii) Snow removal equipment, except that equipment used on any side that abuts residentially zoned occupied property shall be used during daytime hours only.
 - (iv) Noise generated by refuse and solid waste collection, except that equipment used in this manner shall be used during daytime hours only.
 - (v) Noise generated from power equipment such as, but not limited to, power saws, sanders, lawn and garden tools, lawn mowers, snow blowers, or similar devices operated during daytime hours.
 - (vi) Emergency or extraordinary situations.
- (c.2) Measurement Procedures: For the purpose of determining noise levels as set forth in this Ordinance, the following guidelines shall be applicable.
- (i) After an initial inspection to determine that noise is being emitted from a property under the jurisdiction of this ordinance, the Code Enforcement Officer reserves the right to hire a consultant or expert in the field of sound measurement. All costs billed by the consultant or expert must be paid for by the owner of the property from which the sound is being emitted.
 - (ii) All personnel conducting sound measurements shall be trained in the current techniques and principles of sound measuring equipment and instrumentation.
 - (iii) Instruments used to determine sound level measurement must conform to the current Standards of A.N.S.I. Type I or Type II meters.
 - (iv) The general steps listed below must be followed when preparing to take sound level measurements:
 - (1) The instrument manufacturer's specific instructions for the preparation and use of the instrument must be followed.
 - (2) The sound level meter must be calibrated before and after each set of measurements. The calibrator itself shall be recalibrated at least once every year.
 - (3) The sound level meter must be placed as specified by the manufacturer's instructions and at least four (4) feet above the ground. It shall be placed so as not to be interfered with by individuals conducting the measurements.
- (c.3) Sound Barrier Walls: If sound barrier walls are used, their technical specifications must be submitted to demonstrate that:
- (i) Noise levels at the property line(s) are limited to the regulations set in subsection (2)(c)(i)-(iv) and (2)(c)(c.1)(i)-(vi).
 - (ii) The walls shall be placed in the most effective location within the 150 foot buffer.
 - (iii) Landscaping is placed between the wall and residentially zoned occupied property. The required photo simulations must demonstrate that the landscaping provides at least 25% screening of the wall surface at the time of installation, and 75% screening when the vegetation has reached full maturity.

B. Hours of Operation

- (1) **Delivery Hours:** Delivery by vehicles with more than two axles and refrigeration units shall not be made between the hours of 11:00 p.m. and 7:00 a.m. The Planning Board may grant exceptions to this requirement provided that its review and approval finds that,
 - (a) **Noise barriers:** A fully enclosed, noise-proof barrier, is used to block release of any noise or light in excess of the standards provided in subsections (2)(c)(i)-(iv), (2)(c)(c.1)(i)-(vi) and (2)(b)(i)-(iv) , and
 - (b) **Delivery Area Lighting:** On-site lighting is limited only to that reasonably necessary to accommodate such after-hours deliveries and shall not exceed the standards set forth in subsection (2)(b)(i)-(iv).
 - (c) **Truck Idling:** Delivery trucks shall not idle for longer periods than necessary to perform delivery functions.
- (2) **Retail Hours of Operation:** Retail hours of operation shall not commence earlier than 7:00 a.m. nor end later than 11:00 p.m.
- (3) **Non-Retail Hours of Operation:** Non-retail activities, such as outside loading or moving of pallets or stock in trade or stacking of delivery vehicles, shall not be allowed outdoors if they exceed the noise or lighting restrictions in (2)(c)(i)-(iv), (2)(c)(c.1)(i)-(vi) and (2)(b)(i)-(iv) . Non-retail activities within the building are permitted between 11:00 p.m. – 7:00 a.m.

C. Building Design Standards:

The following standards are intended to ensure that retail and commercial buildings are compatible in design with the surrounding area and community character of the city. All additions to existing retail and commercial service buildings, built either before or after the adoption of this Ordinance, are required to meet these building design standards.

- (1) **Internal Subdivision:** The building footprint must be designed and constructed in such a way as to enable future possible internal subdivision and re-use by future, unrelated parties.
- (2) **Structural & Decorative Elements:** The building shall employ building setbacks, height, roof treatments, door and window openings, and other structural and decorative elements to reduce apparent size and scale.
- (3) **Building Scale:** The apparent mass and scale of large buildings shall be reduced through the use of materials and architectural elements that provide a pedestrian scale and visual interest.
 - (a) Building facades visible from public streets and public spaces shall be stepped back or projected forward at intervals to provide a minimum of forty percent (40%) facade modulation. The minimum depth of modulation should be one foot and the minimum width shall be five feet. Ground floor facades that face public streets shall have arcades, display windows, entry areas,

awnings or other such features along no less than fifty percent (50%) of their horizontal length.

- (b) Articulation. Buildings shall be articulated to reduce the apparent scale of buildings. Architectural detail options may include reveals, battens, and other three dimensional details that create shadow lines and break up the flat surfaces of the facade. The following are recommended methods to achieve this:
 - (i) Tripartite articulation that establishes a building top, middle, and base to provide pedestrian-scale and architectural interest.
 - (ii) Windows should be articulated with mullions, recesses, etc., as well as applying complementary articulation around doorways and balconies.
 - (iii) Arcades, balconies, bay windows, dormers, and/or columns may be used.
 - (iv) A distinctive roofline to reduce perceived building height and mass, increase compatibility with smaller scale and/or residential development, and add interest to the overall design of the building. Roofs with particular slopes may be required by the Planning Board to complement existing buildings or otherwise establish a particular aesthetic objective consistent with buildings nearby. This compatibility may be accomplished by:
 - (a) The use of alternating dormers, stepped roofs, gables, or other roof elements to reinforce the modulation or articulation interval.
 - (b) Flat-roofed designs alone are prohibited. Cornices and decorative facings shall be used to eliminate the view of the flat roof from ground level.
 - (c) In retail areas, small-scale additions may be used to reduce the apparent bulk. Clustering smaller uses and activities around entrances on street-facing facades also allows for small retail or display spaces that are inviting and add activity to the streetscape.
- (c) Building Materials: Building materials shall be unified throughout the building, and shall complement other buildings in the vicinity.
 - (i) Predominant exterior building materials may not include the following: smooth-faced concrete block, tilt-up concrete panels; pre-fabricated steel panels, vinyl siding (ground floor applications). Wood-textured cementitious fiber board products may be considered in lieu of wood siding.
- (d) Building Color. Façade colors shall be non-reflective, using neutral or earth tones. The use of high intensity colors, metallic color, black, or fluorescent colors on facades is prohibited. Building trim or architectural accent

elements may feature brighter colors, but they shall not be high intensity, metallic, black, or fluorescent in nature.

- (4) Delivery and service areas must be located on areas of the building or site that are not within 500 feet of residentially zoned occupied property.

D. Additional Requirements

(1) Access Management:

- (a) *No egress from or ingress to a site subject to this section shall be permitted over residentially zoned property, except for emergency vehicles.*

(2) Traffic Study:

- (a) *As part of any site plan development application subject to this section, a developer must commission an independent traffic study to ascertain the traffic flow on streets that may be impacted as a result of development on the proposed site. The Planning Board shall determine the streets to be studied.*

If a site plan development application is granted final approval by the Planning Board and development is permitted, then nine (9) months following the initiation of the intended use of the site, the developer must commission a second independent traffic study to ascertain the post-occupation flow of traffic on streets. The Planning Board shall determine the streets to be studied.

If, in the judgment of the Planning Board, the results of the second traffic study evidence a measurable increase of traffic flow on the streets designated by the Planning Board, the developer shall work with the City Administration and take steps to moderate the increased traffic flow by the use of such measures as, for example, stop sign installation and construction of speed slowing devices.

(3) Impact Analysis

The Planning Board will require an impact analysis to be conducted by a qualified consultant retained by the City at the applicant's expense. In addition to the standards found in section 507 of the Site Plan Review Ordinance, the study shall assess and provide data on the following:

- (a) Data Description: The same data must be provided by the analysis as that stated in Section 507(A) of the Site Plan Review Ordinance.
- (b) Impact Analysis: The consultant also must conduct an analysis of and provide data on the following:
- (i) Estimated economic impact on the City of Westbrook including,
- Employment,
 - Businesses,

- Municipal tax revenues,
 - Project generated revenue retained and redirected into Westbrook's economy,
 - General assistance resources, and
 - Social services.
- (ii) A proposed project's impact on residentially zoned occupied property within 500 feet of the proposed development.

Once the Study has been completed, the consultant in conjunction with the Department of Planning, Engineering and Code Enforcement shall present it to the Planning Board for review and comment. The Planning Board may ask for additional information or comments from other community agencies. The consultant shall use the information, data, and conclusions of the Study to make recommendations on the applicant's participation in municipal infrastructure improvements based on Section 508 of the Site Plan Review Ordinance.

In deciding whether to approve a project, the Planning Board must make a specific finding as to a project's impact on the city, basing that finding on the analysis described in this subsection.

- (4) In deciding whether to approve a project, the Planning Board must make specific findings as to a proposed development's compliance with the city's comprehensive plan.

Applicability Date: Notwithstanding any other provision of law and to the maximum extent permitted by law, this ordinance amendment, if and when adopted, shall relate back in time, and be applicable to, any project, development or land use application that has not had substantive review of such application, within the meaning of 1 M.R.S.A. § 302, as of August 2, 2004. (Ord. of 08-15-05; 11-17-14)

506 Appearance Assessment.

For appearance assessments, the factors described under section 502.6, subsection G., shall apply.

507 Community Facilities Impact Analysis.

The Planning Board may require the applicant to conduct a community facilities impact analysis. In conducting analysis for residential development, the applicant is directed to use the factors outlined in the subdivision ordinance. For commercial, industrial or institutional development the applicant shall take the following factors into consideration:

- A. Data Description. The analysis must identify data associated with the project including, but not limited to, the following: (1) Number of employees, shifts, and period of operation; (2) Where retail business is concerned, anticipated trade area, trade area population description and desired customer mix; (3) Area of operating space, seating capacity, rooms, beds, or number of pumps whichever is appropriate;

(4) Where waste production is involved, description of type, volume, and method of removal.

- B. Community Facilities Impact Analysis. Utilizing the above data, the applicant must conduct an analysis of the following: (1) Estimated impact on sewage disposal system, including assessment of capacity and ability to accept particular types of flowage; (2) Estimated impact on the water system, including flow estimates, impact on capacity and assessment of existing or potential water pressure; (3) Estimated impact on the traffic system including the impact of projected trips on flow characteristics and the impact of traffic on the immediate existing road structures, trip distribution and all modal choices; (4) Estimated impact on public safety providers; (5) Projected percentages of in-migration and demographic breakdown resulting from employment related to the proposed business; (6) Estimated impact on public works department, including solid waste disposal; (7) Estimated impact on existing storm water management systems, including flow and water quality impact; (8) Any other study deemed appropriate by the Planning Board.

Once the analyses have been completed, the applicant shall present them to the Department of Community Development and Planning for review and comment. The Department may ask for additional information, changes to conclusions, a peer review, or comments from other community agencies.

508 Development Impact Fees.

The Planning Board may require the applicant to participate in municipal infrastructure improvements. Where it is demonstrated that the applicant's proposed development will result in a negative impact or decline in level of service of any existing municipal infrastructure system or services, the Planning Board shall assess and establish the applicant's level of participation in accordance with improvements of that system or service.

509 Handicap Access.

The plan must indicate the location and type of handicap access to restroom facilities, parking areas, and entrances and exits. The plan must be in accordance with the standards established in the Americans with Disability Act (ADA), as revised.

510 Approval Expiration.

Site Plan approval expires unless the work necessary to accomplish the purpose for which it was requested is commenced within one year and completed within two years after the date of Planning Board approval or is completed in accordance with a phased completion schedule proposed by the applicant and approved by the Planning Board, as incorporated in the final approval. Failure to complete a subsequent phase within the required period shall also have the effect of causing the permit to expire. Any applicant may come back before the Board and request a permit extension. An extension request must occur within one year after approval was granted. An extension of the completion date established for the project must be requested within two (2) years after the project was approved by the City. Deadline dates for phased

developments shall be established at the time of approval. The Planning Board may choose not to grant more than two permit extensions for the same project. (Ord. of 4-5-10)

511 Appeal.

The applicant, abutting landowner, or aggrieved party may appeal a site plan review decision of the Planning Board to the Superior Court of the State of Maine within thirty (30) days of the Planning Board decision.

(Ord. of 03-07-05)

512 Standards and Criteria.

The following standards and criteria shall be used in conjunction with the minimum design and performance standards of Section 504, to guide the Planning Board through the decision process.

- 512.1 **Utilization of the Site.** The plan for development must reflect the natural capabilities of the site to support development. Environmentally sensitive and natural drainage areas must be buffered and preserved to the maximum extent possible. The landscape must be preserved in its natural state as practicable. This includes minimizing tree removal and disturbance of soil whenever possible.
- 512.2 **Adequacy of Road System.** Vehicular access to the site must be on roads which have adequate capacity to accommodate additional traffic. Intersections in the vicinity of the project must be maintained at a level of service D. If the intersection is already below D, improvements shall at least maintain the existing level of service for that intersection. This requirement may be waived if the project is within a designated growth area or there is an approved project to modify the existing traffic system.
- 512.3 **Access to the Site.** Vehicular access shall be safe and convenient. All roadways shall have minimum sight distance in all directions. Points of access shall avoid hazardous conflicts with existing turning movements, especially where an accident critical rate factor equal to or greater than one (1) exists. A minimum of curb cuts is desired, shared access with adjacent properties is used whenever practicable.
- 512.4 **Internal Vehicular Circulation.** The layout of the site must provide for safe movement of passenger, service and emergency vehicles within the site. Turning movements shall meet minimum standards for the designated activity. All roadways and parking areas shall be designed to harmonize with topographic and natural features to minimize grading and fill.
- 512.5 **Pedestrian and other modes of Transportation.** The site must provide a system of pedestrian movement where there are safe and convenient connections between buildings and parking areas. The system shall also encourage alternative modes of

transportation and provide convenient access. Connections shall also be made to the neighborhood, and to other corridor systems planned for the community.

- 512.6 **Stormwater Management.** Adequate provisions must be made for the collection, treatment and disposal of stormwater. To the extent possible, the plan retains stormwater using natural features, has a program to reduce contaminants before they exit the property, and the rate of flow shall not exceed pre-existing conditions.
- 512.7 **Erosion Control.** Best management practices shall be used in erosion control. All site activities shall utilize natural conditions to the best extent possible such that filling, excavation and earth moving is kept at a minimum.
- 512.8 **Utilities.** The plan shall demonstrate adequate water supply (for drinking and emergency purposes), sewage disposal, electrical, telephone, gas, and telecommunication or how the applicant is going to provide hook-ups and new capacity to the site. All utilities shall be underground.
- 512.9 **Hazardous, Special and Radioactive Materials.** The handling, storage and use of materials identified by a state or federal agency shall have an appropriate plan of action and be done so in accordance with appropriate standards.
- 512.10 **Technical and Financial Capacity.** The applicant has demonstrated technical and financial capacity to carry out the project.
- 512.11 **Solid Waste.** The project must demonstrate an adequate plan for solid waste disposal.
- 512.12 **Historic, Archaeological and Botanical Resources.** Where such sites are identified, appropriate measures to protect or study these areas shall be put in place, be part of the site design and take into consideration the timing of construction.
- 512.13 **Landscape Plan.** The landscape plan shall be consistent with existing vegetation, provide significant buffers where such are deemed necessary, and result in a harmonious blend with surrounding properties.
- 512.14 **Others.** Based on particular cases, the Planning Board may choose to add other criteria in their final decision.

Chapter VI Enforcement

601 General Statement.

601.1 **General Statement.** The purpose of this chapter is to ensure that construction, whether new or renovated, and general development throughout the city is of a quality that protects the health, safety, and welfare of the public.

602 Permits.

602.1 **Permit.** The following permits are required in the City of Westbrook:

A. **Building Permits.** A person who desires to construct, reconstruct, structurally alter, add to, relocate, or demolish a building, construct a pool, build a shed, install a fence, must first obtain a building permit. A building permit is required for the following activities:

Construction of a building,
Reconstruction of a building,
Structurally altering of a building,
Addition to a building,
Relocation of a building,
Demolition,
Installation of a pool,
Installation of a fence,
Construct and/or placement of a shed.

B. **Use Permit.** The owner of a building which has been constructed, reconstructed, structurally altered, added to, or relocated, must obtain a use permit before the building or part of it requiring a building permit may be occupied. The purpose of this permit is to ensure that the use is permitted.

C. **Change-of-Use Permit.** The owner of real estate who desires to change its use without making any change for which a building permit is required must first obtain a Change of Use Permit.

D. **Permit for Expansion of Non-Conforming Use or Use Permitted by Exception.**

- (1) The owner of real estate who desires to expand its non-conforming use must follow the requirements of section 203 and obtain a building permit from the Code Enforcement Officer.
- (2) The owner of real estate who desires to expand its use which was permitted by special exception or conditional permit, must obtain an amended special

exception from the Planning Board before proceeding and obtain a building permit from the Code Enforcement Officer.

E. Excavation and Fill Permit. An excavation or fill that is not covered by any other permit in this Ordinance is required to obtain a permit from the Code Enforcement Officer if:

- (1) Excavation. More than thirty (30) cubic yards is proposed to be excavated from the property . The applicant shall describe the reasons for the excavation, disposition of the soil, identification of any potentially contaminated soil, erosion and sedimentation control, and impact on surrounding properties.
- (2) fill.. The applicant must demonstrate the purpose of the fill, if, and how much wetlands on the site are proposed to be filled, that no drainage course is changed, and that proper soil and erosion practices are put in place.

The Code Enforcement Officer in consultation with other city staff, will approve or deny the permit to fill based on the environmental issues noted above.

F. Driveway Permit. The Code Enforcement Officer shall approve or deny, in consultation with the City Engineer, driveway permits. In applying for such a permit, the applicant shall provide information on the elevation of the driveway, its slope into the street (no slope greater than 3% is allowed). The Code Enforcement Officer shall insure that no drainage way is obstructed, that improvements are made to handle flow capacity, and that the design does not create an erosion and sedimentation problem.

The standards of this section replace those in Chapter 29, Article V, of the City of Westbrook Code of Ordinances.

603 Permit Procedures.

603.1 **Permit Procedure.** An applicant for a permit of any type must submit a written application to the Code Enforcement Officer. The Code Enforcement Officer shall review the application and shall make any necessary inspection within a responsible time. If the application is for a permit which can be issued by the Code Enforcement Officer and the requirements of this Ordinance and any other pertinent ordinance or State statute are met, the Code Enforcement Officer shall issue the permit to the applicant. If the application is for a permit which requires approval of the Zoning Board of Appeals or the Planning Board, the Code Enforcement Officer shall refuse to issue the permit and shall advise the applicant of the necessary procedures to be taken.

A. Application for Building Permit. An application for a building permit must state the intended use to be made of the land and buildings. It must be accompanied by a plot plan drawn approximately to scale showing the dimensions of the lot, the location and size of a building proposed to be constructed or relocated, and the location of any public or private way on or adjacent to the lot. All designs must be

in accordance with appropriate building and life safety codes, adopted by reference by the City, as from time to time amended. The drawing must be of adequate quality to determine impact on setbacks and compliance with building codes.

- B. **Application Retained.** An application for any type of permit, any accompanying data, and a copy of each permit issued must be kept on file in the office of the Code Enforcement Officer.
- C. **Inspection of Premises.** The Code Enforcement Officer may inspect all necessary parts of any premise regulated by this Ordinance during reasonable hours.
- D. **Fees.** Fees for permits shall be determined by the City Council.

604 Duties of the Code Enforcement Officer.

- 604.1 **Enforcement.** The Code Enforcement Officer (CEO) shall enforce this Ordinance. The CEO shall make determinations under and interpretations for this Ordinance, subject to the right of appeal of any aggrieved person under Chapter 7 of this ordinance. The Code Enforcement Officer's interpretations of the ordinance shall create precedent and will be recorded for future determinations.
- 604.2 **Periodic Inspection.** The Code Enforcement Officer shall travel each public way in the City of Westbrook, from time to time, to insure that there are no violations of this ordinance.
- 604.3 **Annual Report.** The Code Enforcement Officer shall file a report with the Municipal Officers on a quarterly basis, and an additional summary of the year's activity on an annual basis. The report shall contain a list of violations of this Ordinance and his/her actions with respect to them. The report shall also include the building permits issues, and actions taken by the Zoning Board of Appeals.
- 604.4 **Complaints.** When any person files a complaint with the Code Enforcement Officer that this Ordinance is being violated, the Code Enforcement Officer shall immediately examine the subject of the complaint and take appropriate action. The Code Enforcement Officer shall keep a record of these complaints, the action on them, and report to the complainer, upon request.
- 604.5 **Violation Procedure.** When any violation of this Ordinance comes to the attention of the Code Enforcement Officer, a written notice of the violation to the owner of the premises shall be delivered. The notice may be served by having a copy of it delivered by certified mail, by handing a copy to the owner, or by leaving it at the owner's place of residence or usual place of business. If the owner cannot be found after a reasonably diligent search, the notice may be served by posting it in a conspicuous place on the

premises in violation. The notice must state a specific, reasonable time within which the violation must cease. If the owner of the premises does not comply with the order within the specified time, the Code Enforcement Officer shall take appropriate legal action, consistent with Chapter 8 of this ordinance and state statute.

Chapter VII Zoning Board of Appeals

701 General Statement.

The following provisions are consistent with 30-A M.R.S.A. Sec. 4963. As such, the Zoning Board of Appeals serves as a quasi-judicial body, providing for appeals made under this Ordinance.

702 Appointments, Memberships and Terms of Office; Powers and Duties.

- 702.1 **Appointments, Memberships, and Terms of Office.** In accordance with 30-A M.R.S.A. Sec. 4963, the Zoning Board of Appeals consists of five (5) members selected citywide and two (2) alternate members. The term of office of a member or alternate member is three (3) years. The alternate will attend all meetings and will vote in the absence of a member. The alternate may be appointed to a full membership when a vacancy occurs.
- 702.2 **Limitations on Membership.** A member of the City Council or spouse may not be a member or alternate member of the Zoning Board of Appeals.
- 702.3 **Officers.** Annually on or about January 1, the Board of Appeals shall elect a chairman and vice chairman. The chairman shall preside at all hearings and the vice chairman shall preside in his absence. A record shall be kept of the meetings, including any actions taken by the Board.
- 702.4 **Appointments.** Appointments are nominated by the Mayor and approved by the municipal officers.
- 702.5 **Absence or Disability.** When a member of the Board of Appeals is unable to act because of interest, physical incapacity, or absence, the chairman shall appoint an associate member to act in his stead.
- 702.6 **Powers and Duties.** The Zoning Board of Appeals shall have the authority to hear the following matters:
- A. Appeals under section 703.1 of this Ordinance
 - B. Variance appeals under section 704 of this Ordinance
 - C. Flaglot applications under section 705.5 of this Ordinance

703 Appeal to Board of Appeals.

- 703.1 **Appeal to Board of Appeals.** A person aggrieved by a decision of the Code Enforcement Officer, as provided by this ordinance, may appeal to the Zoning Board of Appeals. The person must file a notice of appeal with the Code Enforcement Officer within 30 days of the action taken. The notice must cite the decision appealed from, identity of the property involved, and state the specific grounds for the appeal. It must

be signed by the appellant or legal representative. The appellant shall pay a filing fee to cover the cost of advertising the appeal, as required by Section 703.3.

- 703.2 **Filing Date Record.** The Code Enforcement Officer shall stamp the filing date on the notice of appeal, give a copy to the appellant, send a copy to the Zoning Board of Appeals, and keep a file a copy in the appropriate tax map and lot file.
- 703.3 **Appeal Advertised.** On receipt of the notice of appeal, city staff shall determine a hearing date and have the notice of appeal and the time and place of the hearing published on the City's Website and in a newspaper having general circulation in the City at least seven (7) days before the hearing.
- 703.4 **Abutters Notified.** The Code Enforcement Officer shall mail a copy of the notice of appeal and the time and place of the hearing to the property owners within 500' of the project at least fourteen (14) days prior to the day of the hearing at their last known places of address as shown on the municipal tax record. Public and private rights-of-way do not limit the 500 foot distance measurement. Failure of the Code Enforcement Officer to send or of a property owner to receive a copy of this notice does not invalidate the hearing.
- 703.5 **Hearing Procedure.** The Zoning Board of Appeals shall determine the hearing procedure.

704 Variances.

- 704.1 **Variance.** Except as provided in Sections 704.2, and 704.3, the Zoning Board of Appeals may grant a variance only when strict application of the ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:
- A. The land in question can not yield a reasonable return unless a variance is granted,
 - B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood,
 - C. The granting of a variance will not alter the essential character of the locality; and,
 - D. The hardship is not the result of action taken by the applicant or a prior owner,
 - E. No other alternative to a variance is available to the applicant,
 - F. The granting of the variance will not unreasonably adversely affect the natural environment,
 - G. The property is not located in a Resource Protection zone.
- (Ord. of 03-07-05)

A copy of each variance request, including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commissioner of the Department of Environmental Protection at least twenty (20) days prior to action by the Zoning Board of Appeals. Any comments received from the Commissioner prior to the action by the Zoning Board of Appeals shall be made part of the record and shall be taken into consideration by the Zoning Board of Appeals.

(Ord. of 11-2-09)

- 704.2 **Disability Variance.** For the purposes of this section, “disability” has the same meaning as a physical or mental handicap under 5 M.R.S.A. Section 4553-A.

Disability Structures. The Code Enforcement Officer may issue a permit to an owner of a dwelling for the purpose of making a dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. If the permit requires a variance, the permit is deemed to include that variance solely for the installation of equipment or the construction of structures necessary for access to or egress from the dwelling for the person with a disability. The Code Enforcement Officer may impose conditions on the permit, including limiting the permit to the duration of the disability or to the time that the person with a disability lives in the dwelling.

Vehicle Storage. A disability variance may be granted pursuant to this subsection (M.R.S.A. Sec.4353 4-A).

The Zoning Board of Appeals may grant a variance to an owner of a dwelling who resides in the dwelling and who is a person with a permanent disability for the construction of a place of storage and parking for a noncommercial vehicle owned by that person and no other purpose. The width and length of the structure may not be larger than 2 times the width and length of the noncommercial vehicle. The owner shall submit proposed plans for the structure with the request for the variance pursuant to this paragraph to the Zoning Board of Appeals.

The person with the permanent disability shall prove by a preponderance of the evidence that the person's disability is permanent.

For purposes of this paragraph, "noncommercial vehicle" means a motor vehicle as defined in 29-A M.R.S.A Section 101, Subsection 42 with a gross vehicle weight of no more than 6,000 pounds, bearing a disability registration plate issued pursuant to 29-A M.R.S.A Section 521 and owned by the person with the permanent disability.

The board may impose conditions on the variance granted pursuant to this subsection.

(Ord. of 11-17-14)

- 704.3 **Practical Difficulty Variance.** The Zoning Board of Appeals may grant a variance from the dimensional standards of the zoning ordinance when strict application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:

- A. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
- B. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
- C. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
- D. No other feasible alternative to a variance is available to the petitioner;

- E. The granting of a variance will not unreasonably adversely affect the natural environment; and
- F. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435.

As used in this section, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this section, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

(Ord. of 03-07-05)

705 Flaglots. Repealed. (Ord. of 4-5-10)

706 Special Conditions.

In granting a variance, the Zoning Board of Appeals may impose special conditions consistent with the purposes of this Ordinance and with the Comprehensive Plan, with which the appellant must comply. The conditions shall be stated specifically in the copy of the decision that is mailed to the appellant as provided in Sec. 703. The appellant may appeal the imposed conditions to the Superior Court as provided by statute. If the imposed conditions are temporary, they shall expire automatically on the date set by the Board of Appeals. If permanent, they must be stated on the certificate of approval over the signature of the Code Enforcement Officer and be recorded in the Registry of Deeds.

- A. **Suspense File.** The Code Enforcement Officer shall maintain a suspense file containing records of all conditions granted by the Zoning Board of Appeals. He/She shall review each extension annually, and shall make an on-site inspection to see whether the condition is being observed.
- B. **Violation.** If the Code Enforcement Officer finds that any condition is being violated, he/she shall make a record of the violation and follow the violation procedure set forth in Section 802 of this Ordinance.

707 Time Limitations of Rights Granted by the Zoning Board of Appeals.

A right of appeal granted by the Zoning Board of Appeals expires unless the work necessary to accomplish the purpose for which it was requested is commenced within one (1) year and completed within two (2) years after it was granted, or is completed in accordance with a phased completion schedule proposed by the applicant and approved, or modified and approved, by the Board of Appeals and incorporated in its decision granting the variance. In determining whether work has been completed in accordance with an approved schedule, allowances may be made for delays in scheduled completions caused by inclement weather, strike, or acts of a natural nature.

708 Limitation on Subsequent Appeals.

If the Zoning Board of Appeals denies an appeal with respect to certain building or premises, a second appeal of a similar nature may not be brought to the Board within six (6) months.

709 Appeal to Superior Court.

A person aggrieved by the Board of Appeals may appeal to the Superior Court. The appeal shall be taken within forty-five (45) days after the date of the vote on the decision (30-A MRSA Section 2691). (Ord. of 11-17-14)

710 Recording.

If the Zoning Board of Appeals grants a variance under this section, then a certificate indicating the name of the current owner, identify the property by reference to the last recorded deed in its chain of title, that a variance has been granted and the date of that action. Any conditions that were granted as part of the approval shall also be listed. This certificate must be recorded with the Registry of Deeds by the applicant within ninety (90) days from the final written approval date on the certificate, or the variance is void.

Chapter VIII Penalty Provisions

801 Enforcement.

The Code Enforcement Officer shall enforce this Ordinance conducted in accordance with 30-A M. R.S.A. Section 4452, as amended.

802 Violation of Partnership or Corporation.

If this ordinance is violated by a partnership, corporation, person, members or officers who participated or are authorized in the action resulting in the violation are subject to the penalties described in 30-A M.R.S.A. Section 4452, as from time to time amended. The following penalties shall be observed:

- A. Starting construction without a permit - \$100.00,
- B. Minimum penalty for a specific violation is \$100 per day, up to a maximum of \$2,500,
- C. Any other penalties as identified in 30-A M.R.S.A. Section 4452.

803 Owners, Contractors, and Others.

Owners, contractors, subcontractors, employee, or agent of the owner of real estate for any other person who performs services without the proper permit or verifying that it has been obtained is in violation of this Ordinance.

804 Nuisance.

Any real estate or personal property in violation of this Ordinance is a nuisance.

Appendix B

MASTER FEE SCHEDULE

This Schedule is subject to amendment by Council Order.

Amended 7/6/09, 9/14/09, 1/4/10, 2/8/10, 3/1/10, 4/5/10, 5/24/10, 7/12/10, 8/30/10, 3/28/11, 8/15/11, 12/5/11, 11/19/12, 6/3/13, 7/22/13, 11/4/13, 3/3/14

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| Chapter 5 – Bicycles | | |
| § 5-6 | Annual license fee | \$0.25 |
| Chapter 6 – Buildings | | |
| § 6-13 | Building permits (amended 4/5/10, 8/15/11) | \$35.00 + \$13.00/\$1,000 construction costs |
| | Demolishing a building (amended 4/5/10, 8/15/11) | \$35.00 + \$13.00/\$1,000 construction costs |
| | Reinspection Fee (added 4/5/10) | \$35.00 |
| | Installation of ventilation, refrigeration, sprinkler system, and automatic fire alarm and detection system | \$5.00/1,000 sq. ft. |
| | Signs | |
| | 1-10 sq. ft. | \$20.00 |
| | 11-50 sq. ft. | \$35.00 |
| | 51+ sq. ft. | \$70.00 |
| | Heating installation (flat fee) | \$35.00 |
| | Temporary stands, booths or platforms for sale of merchandise or other business purpose | \$25.00 |
| | Installations not otherwise listed | \$25.00 |
| | Belated permits (permits not applied for until after the work has been started) | double the amount of the fee as set forth above |
| | Explosives, blasting (expires Dec. 31) – extractive industries | \$250.00/site |
| | Explosives, blasting – all other activity (updated 2-8-10) | \$25.00/shot ¹ , daily max. of \$250.00 |
| § 6-16 | Swimming Pools: Above Ground & In-Ground (updated 5-18-09) | \$30.00 application fee + \$13.00/\$1000 |
| § 6-21 | Application fee for a flood hazard development permit | \$50.00 plus expert fees |
| Chapter 7 – Cemeteries | | |
| § 7-26 | Sale or transfer of lots to nonresidents | \$50.00 plus cost to resident |
| Chapter 11 – Electricity (full section amended 4/5/10) | | |
| § 11-10 | Application Fee | \$35.00 |
| | New Service | \$100.00 |
| | New Commercial Service | \$.05/sq. ft. |
| | Alteration for 3 or more units / per unit and Alteration of Commercial | 1% over \$1,000 Contract Price + \$25.00 Application Fee |
| | Reinspection Fee | \$35.00 |
| Chapter 13 – Fire Protection and Prevention (amended 4/5/10) | | |
| § 13-97 | Application fee for solid fuel appliance permit | \$35.00 |
| Chapter 16 – Garbage and Rubbish | | |
| § 16-34 | Annual residential demolition debris permit | \$10.00 (\$5.00 after July 1 of current year) |
| | Residential one-day permits for demolition debris | \$1.00 (\$5.00 max) |
| | Additional residential fee for refrigerators, air conditioners, and humidifiers, | \$15.00/each |

¹ Shot is defined as all explosives detonated in a single cycle.

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| | and other appliances containing HFC's | |
| | Annual commercial hauler permit | \$150.00 |
| | Per load commercial operator fees, per admittance | |
| | ½, ¾ ton pickups, vans and trailers (one (1) cubic yard or less) | \$15.00 |
| | ½, ¾ ton pickups, vans, trailers (exceeding one (1) yard as estimated by landfill attendant) | \$15.00/yard |
| | Vans, trucks, trailers, 1 ton dump trucks, with capacity of three (3) or more cubic yards | \$50.00 |
| | 6 wheel single axle dump truck (rack body truck, over 1 ton dump truck) | \$150.00 |
| | 10 wheel dual axle dump truck | \$300.00 |
| | 20 cubic yard dumpster (capacity 20 yards or less) | \$300.00 |
| | Any other dumpster, roll-off truck | \$15.00/cubic yard of disposal material |
| | Tractor trailer | \$625.00 |
| | Additional unit charges, per each unit | |
| | Auto tires | \$2.00 |
| | Truck tires | \$5.00 |
| | Truck tires eight hundred (800) and above and loader tires | \$15.00 |
| | White goods including stoves, water heaters, washing machines and clothes dryers | \$5.00 |
| | All other materials | \$15.00/cubic yard |
| § 16-44 | Solid waste application fee | \$100.00 |
| Chapter 20 – Licenses and Permits (Ord. of 2-2-09; 3-3-14) | | |
| | Application Fee for all licenses except Games of Chance & State Liquor Licenses (only one fee charged per business when multiple licenses are applied for at the same time) | \$25.00 |
| | Background Investigation Fee (only one fee charged per person when multiple licenses are applied for at the same time) | \$25.00 |
| | Reinspection Fee | \$50.00 |
| § 20-31 | Food Service Establishments (expires March 1) | |
| | No food preparation on premises | \$150.00 |
| | Food preparation on premises – no alcohol | \$200.00 |
| | Food preparation with malt beverages & wine for consumption on the premises | \$400.00 |
| | Food preparation with liquor for consumption on the premises | \$1,000.00 |
| | Caterer – food preparation on premises | \$150.00 |
| | Outdoor dining as an accessory to a primary indoor restaurant (Ord of 11-19-12) | \$80 + \$2 per sq.ft. for first 10 feet into public way from face of building and \$6 per sq.ft. beyond first 10 feet |
| § 20-41 | Mobile vending unit & Ice Cream Trucks, per unit | \$150.00 |
| § 20-46 | Pushcart/Portable Vending Unit | \$125.00 |
| § 20-51 | Amusement Permit | \$100.00 |
| § 20-56 | Pinball/Video Machines – price per machine (expires March 1) | \$125.00 |
| § 20-61 | Billiard and poolroom (expires March 1) | \$85.00 |
| § 20-64 | Bowling alley (expires March 1) | \$85.00 |
| § 20-67 | Tobacco vendors (expires March 1) | \$50.00 |
| § 20-78 | Theaters (expires March 1) | |
| | Seating capacity of up to 999 (price per screen) | \$250.00 |
| | Seating capacity 999 and over (price per screen) | \$350.00 |
| | Drive-In | \$125.00 |
| § 20-81 | Games of Chance (Bi-annually, as requested) | \$25.00 |
| | Beano/Bingo (expires March 1) | \$100.00 |
| § 20-86 | Transient Sales | |

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| | Sales from a fixed location on private property (good for 30 days – only 2 permits allowed per year) | \$50.00 |
| | Sales from other than a fixed location (annual) | \$100.00 |
| § 20-96 | Taxicab & Livery (all taxicab & livery licenses expire March 1) | |
| | Business (license needed for each vehicle, fee to be paid for each) | \$100.00 |
| | Driver | \$50.00 |
| § 20-115 | Massage Licenses (all massage licenses expire March 1) | |
| | Massage establishment | \$65.00 |
| | Massage therapist | \$45.00 |
| | Combined massage therapist/establishment (sole practitioner) | \$65.00 |
| § 20-126 | Automobile Salvage Yards/Junkyards (expires December 31) | \$100.00 |
| § 20-131 | Commercial Hauler (expires December 31) | \$150.00 |
| § 20-136 | Towing (expires December 31) | \$125.00/company (for 1 wrecker) + \$50.00 for each additional wrecker |
| § 20-148 | Towing fees - updated 11/4/13 | |
| | • Per Non-Accident Tow | \$85.00 |
| | • Per Accident Tow | \$95.00 |
| | Per tow of any vehicle with dual tires on the rear axle | \$105.00 |
| | Vehicle storage (per 24 hr. period or fraction after the first 24 hour) | \$30.00 |
| | Release Fee (7 p.m. to 7 a.m., weekends and holidays) | \$40.00 |
| | Release Impact Fee (When vehicle owner/operator fails to appear at scheduled appointment time for release of their vehicle. Towing operator must have proof of scheduled appointment.) – updated 11/4/13 | \$25.00 |
| | Difficult extraction or clean-up (to be charged in 15 minute increments) – updated on 5/4/09 | \$80.00/hr. |
| § 20-155 | Farmers Market – price per stall (annual license) | \$15.00 |
| § 20-161 | Tattoo Establishment (expires March 1) | \$100.00 |
| § 20-172 | State Liquor License (new, renewals & caterers, per event) | \$25.00 |
| § 20-178 | Fireworks License Fee (to sell fireworks) | \$1250.00 |
| § 20-187 | Use of Consumer Fireworks Fee (per day) – added 7/22/13 | \$10.00 |
| § 20-196 | Pawnshops & Pawnbrokers – expires March 1 (added 11/4/13) | \$100.00 |
| § 20-206 | Secondhand Dealers – expires March 1 (added 11/14/13) | \$100.00 |
| Chapter 21 – Mobile Homes and Mobile Home Parks | | |
| § 21-3 | Annual permit fee (renewable Jan. 1) | \$50.00 |
| § 21-4 | Definitive plan | |
| | Per each boundary monument shown on the plan as required by the regulations | \$30.00 |
| | Security for the later submissions to the planning board of an accurate record plan and profile | \$250.00 |
| Chapter 24 – Plumbing (Section 24-2 amended 4/5/10, 3/28/11) | | |
| § 24-2 | Minimum permit fee includes up to four fixtures | \$40.00 |
| | Fixture fee – per fixture | \$10.00 |
| | Re-inspection fee (charged by the city plumbing inspector in those instances when work has not been completed upon an inspection or when work was not in compliance with the State Plumbing Code) | \$40.00 |
| | Transfer fee | \$10.00 |
| | Piping relocation with no new fixtures | \$10.00 |
| | Hook up to public sewer | \$10.00 |
| | Permit transfer | \$10.00 |
| § 24-3 | Complete systems: (updated 9/14/09) | |
| | Engineered system (includes one disposal area) | \$200.00 |
| | Non-engineered system | \$250.00 + \$15.00 (state fee) |
| | Primitive system (includes one alternative toilet) | \$100.00 |

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| | Separated laundry disposal field | \$35.00 |
| | Seasonal conversion permit | \$50.00 |
| | System components (installed separately): | |
| | Alternative toilet (only) | \$50.00 |
| | Disposal field | \$150.00 (non-engineered); \$150.00 (engineered) |
| | Treatment tank | \$150.00 (non-engineered); \$80.00 (engineered) |
| | Holding tank | \$100.00 |
| | Variance (is added to permit fee) | \$20.00 |
| | Other System Component (complete pump station, piping) | \$30.00 |
| | Hook up to existing subsurface system | \$10.00 |
| Chapter 25 – Police | | |
| § 25-2 | Burglar alarm system hookup fee | \$25.00 |
| Chapter 26 – Sanitary Facilities, Sewers and Wastewater Treatment | | |
| § 26-46 | Conveyance of easement for sewer line construction and maintenance (unless greater diminution of value is shown) | Greater of \$0.05/sq. ft. or \$1.00/lineal ft. |
| Chapter 27 – Sewer User Fees, Industrial Pretreatment Program Requirements and Industrial Cost Recovery (added on 3/28/11) | | |
| § 27-3 | Industrial pre-treatment permit | \$201.09/month |
| | Industrial pre-treatment BMP permit | \$25.00/month |
| Chapter 29 – Streets and Sidewalks (Updated on 7/6/09) | | |
| § 29-83 | Application fee for each issuance renewal of excavation permit | \$25.00 |
| | Newly constructed or reconstructed and newly paved streets | |
| | Bituminous concrete pavement, 4 inches or more in depth, per square yard | \$70.00 (first 25 sq. y.) \$65.00 (over 25 sq. y.) |
| | Bituminous concrete pavement, 4 inches or less in depth, per square yard | \$60.00 (first 25 sq. y.) \$55.00 (over 25 sq. y.) |
| | All other streets | |
| | Bituminous concrete over concreted base, granite block base, or bituminous concrete base (total bituminous concrete 4 inches or more) | \$50.00 (first 25 sq. y.) \$45.00 (over 25 sq. y.) |
| | Portland cement concrete or granite block | \$29.00 (first 25 sq. y.) \$26.00 (over 25 sq. y.) |
| | Bituminous concrete over macadam base, or bituminous concrete (less than 4 inches) over gravel base | \$30.00 (first 25 sq. y.) \$27.00 (over 25 sq. y.) |
| | Bituminous macadam surface | \$45.00 (first 25 sq. y.) \$40.00 (over 25 sq. y.) |
| | Bituminous treated surface or shoulder | \$25.00 (first 25 sq. y.) \$23.00 (over 25 sq. y.) |
| | Plain gravel surface | \$6.00 (first 25 sq. y.) \$5.00 (over 25 sq. y.) |
| | Sidewalk opening charges | |
| | Brick sidewalk | \$25.00 (first 25 sq. y.) \$25.00 (over 25 sq. y.) |
| | Brick sidewalk on concrete base | \$48.00 (first 25 sq. y.) \$48.00 (over 25 sq. y.) |
| | Bituminous concrete sidewalk | \$20.00 (first 25 sq. y.) \$20.00 (over 25 sq. y.) |
| | Portland cement sidewalk | \$27.00 (first 25 sq. y.) \$27.00 (over 25 sq. y.) |
| | Gravel sidewalk | \$8.00 (first 25 sq. y.) \$8.00 (over 25 sq. y.) |
| | Esplanade (grass) | \$8.00 (first 25 sq. y.) \$8.00 (over 25 sq. y.) |
| | Other charges | |

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| | Bituminous concrete curbing, per linear foot | \$7.00 | |
| | Granite curbing removal or realignment, per linear foot | \$16.00 | |
| | Removing and replacing parking meters, each | \$14.00 | |
| | Removing and replacing street name and traffic-control signs, each | \$25.00 | |
| | Replacement and installation of lost or damaged granite curb | \$20.00 | |
| | Non-emergency street or sidewalk opening within a five-year period of any major paving project | \$300.00 | |
| § 29-84 | Minimum fee for any street or sidewalk excavation | \$175.00 | |
| | Inspection Fees | \$60.00/hour | |
| | Excavators License | \$500.00 Annually | |
| Chapter 31 – Traffic | | | |
| | Scofflaw impound or boot removal fee | \$40.00 | |
| Chapter 35 – Westbrook Cable Television Ordinance | | | |
| § 35-3 | Filing fee for franchise contract (nonrefundable) | \$25.00 | |
| § 35-5 | Performance bond | \$100,000.00 | |
| Appendix A: Land Use Ordinance – Site Plan Review (*Amended 3/1/10. **Amended 4/5/10) | | | |
| * | Extension of site plan approval | \$75.00 | |
| * | Meeting with staff to discuss a concept for a site plan | \$300.00 | This fee is applied to site plan fees if a site plan application is later filed. |
| * | Sketch Plan | \$250.00 | Pub. & notice: \$1.00/letter+legal+postage |
| * | Application fee for site plan review, plus advertising | 10,000sq.ft. or less, \$750; 10,000 to 49,999sq.ft., \$1,000; 50,000 to 99,999sq. ft., \$1,500; 100,000 sq.ft. and up, \$2,000. Double for after the fact approval. | Pub. & notice: \$1.00/letter+legal+postage |
| ** | Application fee for site plan review exemption | \$250.00 | |
| ** | Site Improvement Inspection Fee | 2% of estimated improvement costs | Where a project includes a Site Plan and a Subdivision then this fee shall only apply once |
| ** | Acceptance of a City street | \$500 | |
| ** | Plan amendment(s) | Half of original fee | Pub. & notice: \$1.00/letter+legal+postage |
| ** | Staff Review time: City Engineer and City Planner | City Engineer: After 1 st two hours: hourly rate based on then current salary + benefits. City Planner: After 1 st four hours: hourly rate based on then current salary + benefits. | |
| §309 (added 10-1-12) | Fee in lieu of landscaping in the Gateway Commercial District (GCC). Calculated by multiplying the landscaping percentage deficit under Section 309.3 (O) by ½ of the average assessed value of one acre of land in the GCC, determined as of June 2012. | ½ of average assessed value of 1 acre of land in the GCC as of June 2012 = \$73,000 | |
| Appendix A: Land Use Ordinance – Subdivisions (Full Section Amended 4/5/10) | | | |
| | Application fee for subdivision (Amended 5/24/10) | 1 st 3 lots: \$300; each add'l lot \$250 plus \$200 per condominium or multi-family unit | Pub. & notice: \$1.00/letter+legal+postage |

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| | Public Street Acceptance | \$500.00 | |
| | Site Improvement inspection fee | 2% of estimated improvement costs | Where a project includes a Site Plan and a Subdivision then this fee shall only apply once |
| | Plan amendment(s) (Amended 5/24/10) | For each lot that is amended - 1 st 3 lots: \$300; each add'l lot \$250 plus \$200 per condominium or multi-family unit. | Pub. & notice: \$1.00/letter+legal+postage |
| | Staff Review time: City Engineer and City Planner | City Engineer: After 1 st two hours: hourly rate based on then current salary + benefits. City Planner: After 1 st four hours - hourly rate based on then current salary + benefits. | |
| Appendix A: Land Use Ordinance – Special Exceptions (Updated 3/1/10) | | | |
| | Application fee for special exception review | \$250.00 | Pub. & notice: \$1.00/letter+legal+postage |
| Appendix A: Land Use Ordinance – Village Review Overlay Zone (Amended 3/1/10) | | | |
| | Application fee for review of proposed work in the Village Review Overlay Zone | \$75.00 | Pub. & notice: \$1.00/letter+legal+postage |
| Miscellaneous Fees | | | |
| | BUILDING PERMITS | | |
| | Fill Permit (amended 4/5/10) | | Cu yd. 0-250 = \$15.00 251-500 = \$25.00 501-1000 = \$35.00 Over 1000 = \$50.00 |
| | Re-Inspection fee | | \$25.00 |
| | ZONING (*amended 4/5/10) | | |
| * | Maps-Zoning (24 x 36) | | \$40.00 |
| * | Variance Disability | | No charge |
| * | Variance - Practical Difficulty | | \$250.00 |
| * | Appeals / Administrative | | \$500.00 |
| | Change zoning | | \$1000.00 |
| * | Blueprint copy & Parcel maps | | \$5.00 |
| | PLUMBING | | |
| | Sewer connection | | \$250.00 |
| | CITY CLERK | | |
| | DBA Business Filing (fee set by State) | | \$10.00 |
| | Notary fee | | Resident: \$5.00 per signature; Non-resident: \$10.00 per signature |
| | Genealogy Research (amended 6/28/10) | | \$5.00 per name search after 1 st half hour |
| | Voter List (fee set by State) | | All wards = \$50.00; per ward = \$15.00; disk=\$30.00 |
| | Certified copies (fee set by state) – (effective 7/12/10) | | \$15.00 first copy, \$6.00 each additional copy purchased at same time |
| | Marriage License (fee set by state) – (effective 7/12/10) | | \$40.00 |
| | Perform marriage ceremony at city hall (added 7/12/10) | | \$50.00 |
| | Burial Permit (fee set by state) – (added 7/12/10) | | \$20.00 |
| | Utility Pole Permit | | \$10.00 |
| | ASSESSING (amended 4/5/10) | | |

| | | |
|--|---|---|
| | Reports | \$25.00 for first hour. After 1 st hour, hourly rate based on then current salary + benefits |
| | RESCUE COLLECTION | |
| | Certified letters pre-turnover to collection agency | Cost of certified mail |
| | MISCELLANEOUS | |
| | Returned check fee | \$30.00 |
| | Misc. copies | \$1.00 |
| | CD | \$25.00 |

Appendix C MASTER FINE SCHEDULE

*This Schedule is subject to amendment by Council Order.
Amended 5/4/09, 2/8/10, 2/6/12, 7/22/13*

| | | |
|--|--|-----------------------|
| Chapter 3 – All-Terrain Vehicles | | |
| § 3-5 | Impoundment fee for multiple offenses | \$5.00 per day |
| Chapter 4 – Animals and Fowl | | |
| § 4-12 | Impoundment fees: (updated 2-6-12) | |
| | For each animal, first impoundment | \$25.00 |
| | For each animal, second impoundment | \$50.00 |
| | For each animal, third and subsequent impoundment | \$100.00 |
| § 4-73 | Penalty for violation of chapter 4 | Up to \$450.00 |
| Chapter 13 – Fire Protection and Prevention (updated 5-4-09) | | |
| § 13-36 | False alarms – each third and successive alarm in a calendar year | |
| | Residential & Business/firm | \$40.00/occurrence |
| Chapter 16 – Garbage and Rubbish | | |
| § 16-34 | Fine for dumping without a permit | \$500.00 |
| Chapter 17 – Housing | | |
| § 17-3 | General penalty for violation of housing code | \$100.00 |
| § 17-65 | Fee for third and successive requests for the pumping of basement or other dwelling areas | \$25.00/request |
| Chapter 20 – Licenses and Permits | | |
| § 20-10 | Fine for violation of licensing article | \$100.00 |
| § 20-72 | Fine for first violation of ordinance prohibiting sale of tobacco to a minor | \$100.00 max. |
| | Fine for second violation within one year | \$200.00 max. |
| § 20-121 | Fine for each violation of massage article provisions | \$250.00 |
| § 20-168 | Fine for each violation of tattoo article provisions | \$250.00 |
| § 20-189 | Fine for violation of consumer fireworks permit or use requirements (added 7/22/13) | |
| | 1 st violation | \$100.00 |
| | 2 nd violation | \$300.00 |
| | All subsequent violations | \$500.00 |
| Chapter 21 – Mobile Homes and Mobile Home Parks | | |
| § 21-9 | Fine for violation of this chapter | \$100.00 plus costs |
| Chapter 22 – Offenses – Miscellaneous | | |
| § 22-11 | First offense, smoking in a smoke free zone | \$25.00 |
| | Second offense, same venue | \$100.00 |
| | Third and subsequent offenses, same venue | \$250.00 |
| Chapter 23 – Parks and Recreation | | |
| § 23-6 | Fine for possession of alcoholic beverages in city parks | \$50.00 |
| § 23-7 & 23-10 | Fine for each violation (updated on 3/4/13) | \$50.00 |
| Chapter 24 – Plumbing | | |
| § 24-2 | Fine for beginning work without permit (updated on 2/8/10) | Double the permit fee |
| Chapter 25 – Police | | |
| § 25-2 | Third and subsequent false alarms | \$25.00 |
| Chapter 26 – Sanitary Facilities, Sewers and Wastewater Treatment | | |
| § 26-38 | Industrial users in noncompliance with pretreatment standards and requirements (civil or criminal) | \$1,000.00/day |

| | | |
|--|--|--|
| Chapter 27 – Sewer User Fees, Industrial Pretreatment Program Requirements and Industrial Cost Recovery | | |
|--|--|--|

| | | |
|---------|--|--------------------|
| § 27-38 | Minimum fine for violation of this chapter | \$1,000.00 per day |
|---------|--|--------------------|

| Chapter 31 – Traffic | | |
|--|--|---------------------------------|
| § 31-3 | Maximum penalty for violation of ordinance | \$250.00 plus costs |
| § 31-90 | Parking in handicapped spot | \$10.00 |
| § 31-111 | Parking exceeding time limit | \$20.00 |
| | Parking in taxi stand, bus stop or loading zone | \$40.00 |
| | Parking all night | \$20.00 |
| | Parking double | \$40.00 |
| | Parking too near fire hydrant (police discretion to tow vehicle) | \$60.00 |
| | Parking in prohibited area | \$40.00 |
| | Parking on wrong side of street | \$20.00 |
| | Parking too near cross or corner | \$20.00 |
| | Parking in fire lanes (police discretion to tow vehicle) | \$60.00 |
| | Parking on a crosswalk | \$40.00 |
| | Obstructing snow removal | \$60.00 |
| | Parking in handicapped space (police discretion to tow vehicle) | \$100.00 |
| | Parking in front of a public or private driveway | \$40.00 |
| | Failure to yield to pedestrians on crosswalks | \$40.00 |
| | Other | \$20.00 |
| § 31-120 | Parking violations | \$15.00 |
| Chapter 34 – Weapons and Explosives | | |
| § 34-23 | Penalty for misstatement or omission of information | \$1,000.00 min. |
| Chapter 36 – Westbrook Human Rights Ordinance | | |
| § 36-12 | Initial violation | \$1,000.00 |
| | Second violation | \$2,500.00 |
| | Third and subsequent violations | \$5,000.00 min. - \$50,000 max. |

Appendix D

CHAPTER 25 - POLICE DRUG-FREE SAFE ZONES (Ord. of 7-12-10)

This Schedule is subject to amendment by Council Order.

| Location | Address |
|---|---------------------------------------|
| Ball field | 38 Foster Street |
| Ball field | 25 Stevens Avenue |
| Ball field & Skate Rink | 629 East Bridge Street |
| Basketball Courts & Playground | Hamlet Coach Park, 665 Saco Street |
| Basketball Courts & Playground | Westbrook Pointe |
| Bicentennial Park | 5 Hannaford Drive |
| Cornelia Warren Field Complex (includes pool and basketball courts) | 511 Main Street |
| Mission Possible Teen Center | 755 Main Street |
| Riverbank Park | 657 Main Street |
| Saccarrappa Park | 899 Main Street |
| Skate Rink | 130 Stroudwater Street |
| Skate Rink | 58 Lincoln Street |
| Walker Memorial Library | 800 Main Street |
| Warren Memorial Little League Field | 395 Bridge Street |
| Westbrook Community Center (former Wescott Junior High School) | 426 Bridge Street |

UNIFORM TRAFFIC ORDINANCE

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Schedule I. Stop Signs

| Intersection | | Date Adopted |
|---------------------|-------------------------------------|---------------------|
| Alberta Drive | At Lugin Street | |
| | At Park Road | 12-21-87 |
| Alphonse Street | At Bernadette Street | 10-19-87 |
| | At Huntress Avenue | 10-19-87 |
| Anderson Avenue | On Monroe Avenue | 9-14-70 |
| | At Canal School Drive | 9-26-88 |
| Arlington Avenue | On Wadsworth Avenue | 9-14-70 |
| Austin Street | On Fairmont Road | 9-14-70 |
| Berkley Street | On Clifford Street | 9-14-70 |
| Brackett Street | On Cross Street, East and West | |
| | On Burnham Street | |
| | On Butler Court | |
| | On Grant Street | |
| | On East Valentine Street | |
| | On Pennell Street, East and West | |
| | At Pennell Street, North and South | |
| | On Clark Street | |
| Bridge Street | On Dana Court | |
| | On Brown Street | |
| | On Lincoln Street, West | |
| | On Lincoln Street, East | 7-25-88 |
| | On Webb Street | |
| | On Mitchell Street | |
| | On Walker Street | |
| | On North Street | |
| | On King Street | |
| | On Myrtle Street | |
| | On Myrtle Street, Northerly | 7-29-69 |
| | On Lyman Street | |
| | On Lyman Street Extension | 8-2-72 |
| | On Falmouth Street, North and South | |
| | On Beechwood Avenue | |
| | On Graham Road | |
| | On Lugin Street | |
| | On East Bridge Street | |
| | On Pierce Street | 9-14-70 |
| Bridgton Road | On East Bridge Street | |
| | On Reed Street | |
| | On Pride Street | |
| | On Brook Street | |
| | On Elmwood Avenue, Beginning | |
| | On Elmwood Avenue, End | |
| | On Methodist Road | |

| Intersection | | Date Adopted |
|--------------------|------------------------------------|--------------|
| | On Duck Pond Road | |
| | On Hardy Road | |
| | On Willow Drive | 9-14-70 |
| Brook Street | On Carol Street | 9-14-70 |
| | On Virginia Street | |
| Brown Street | On Dodge Street | |
| | On Garfield Street | |
| | On High Street | |
| | On King Street, North and South | |
| | On Knight Street | |
| | On Lyman Street | |
| | On Mentor Street | |
| | On North Street, North | |
| | On Myrtle Street | |
| | On Reserve Street | |
| | On Walker Street | |
| Canal School Drive | At Glenwood Avenue | 9-26-88 |
| Carlson Street | On Madu Street | 9-14-70 |
| | At Marlu Street (4-way) | 7-6-92 |
| | On Pine View Road | 9-14-70 |
| | On Woodland Road | 9-14-70 |
| Central Street | On Butler Court | 9-14-70 |
| | On Louise Street | |
| | On Lucille Street | |
| | On Pennell Street | |
| | On Vivian Street | |
| | On West Valentine Street | |
| | On Quimby Avenue | |
| | On Prospect Street | 7-2-84 |
| Clifford Street | On Waltham Street | |
| Chestnut Street | On Mitchell Street | 9-24-90 |
| Church Street | On Cross Street | 3-22-72 |
| Colony Road | At Constitution Drive (3-way) | 2-3-97 |
| Constitution Drive | At Colony Road (3-way) | |
| County Road | On Finch Street | |
| | On Oriole Street | |
| | On Spring Street (Traffic Signals) | |
| Cumberland Street | On Bridge Street (Traffic Signals) | |
| | On Brown Street | |
| | On Cottage Place | |
| | On Lowell Street | |
| | On Park Road | |
| | On Pierce Street | |
| | On Raymond Street | |
| | On Warren Avenue | |

| Intersection | | Date Adopted |
|-----------------------|-----------------------------------|--------------|
| | On Webster Street | |
| | On Whitehouse Court (Road Closed) | |
| Deerhill Avenue | On Robyn Avenue | 9-14-70 |
| Deerhill Circle | On Deerhill Avenue | 9-14-70 |
| | On Robyn Avenue | 9-14-70 |
| Delta Drive | At Larrabee Road | 6-20-83 |
| Duck Pond Road | On Mast Road | |
| | On Elmwood Avenue, 2 signs | |
| East Bridge Street | On Halidon Road | |
| | On Austin Street | |
| | On Carlson Street | |
| | On Puritan Drive | 9-6-69 |
| | On Independence Drive | 9-9-69 |
| | On Constitution Drive | 9-14-70 |
| | On Ennis Street | 9-14-70 |
| Everett Street | On Woodmont Avenue | 11-18-85 |
| East Valentine Street | On Little Avenue | |
| | On Maple Street | |
| | On Franklin Street | |
| Fairmont Road | At Austin Street | |
| Falmouth Street | On Ethel Street | |
| Forest Street | On Newcomb Place | |
| | On Oak Street, East and West | |
| | On Clifford Street | |
| | On Cottage Street, West | |
| | At White Street | |
| | At Park Street | |
| | On Melcher Court | 9-14-70 |
| | On Rochester Street | 12-17-75 |
| Gorham Road | On Longley Road | |
| Glenwood Avenue | On Monroe Avenue, North and South | |
| | At Canal Drive | 9-26-88 |
| Graham Road | At intersection with Longley Road | 11-26-07 |
| Green Street | At West Pleasant Street (4 way) | 9-23-02 |
| Hammond Road | On Fales Road | 9-14-70 |
| Hardy Road | On Sawyer Road | 9-14-70 |
| | On Small Hardy Road | 9-14-70 |
| Harrisburg Avenue | On Madison Avenue | 9-14-70 |
| Haskell Street | On Hawkes Street | |
| | On Pine Street (3 way) | 9-23-02 |
| | On Lawrence Street | |
| | On Boothby Avenue | |
| Huntress Avenue | On Arlington Avenue | 9-14-70 |
| Independence Drive | On Puritan Drive | 7-29-69 |
| | On Pilgrim Road | 9-9-69 |

| Intersection | | Date Adopted |
|-------------------|--|--------------|
| | On Mayflower Road | 9-9-69 |
| Jensen Road | At Longfellow Street and New Gorham Road | 3-7-83 |
| King Street | At Prince Street (4-way) | 9-3-91 |
| Lamb Street | At Oak Street (4-way) | 11-15-93 |
| | On Cottage Street, East | |
| | On Gray Street | |
| | On Park Street, East and West | |
| Larrabee Road | On Terminal Road | 8-2-72 |
| Larrabee Woods | On Main Street | 6-20-83 |
| Egress Road | | |
| Lewis Street | On Turner Street | 9-14-70 |
| Lincoln Street | On Kennard Street | 9-14-70 |
| | At Bridge Street | 7-25-88 |
| Little Avenue | On Chesley Street | 9-14-70 |
| Longfellow Street | On Lewis Street | |
| | On Canal Street | |
| | On Arlington Avenue | |
| | On Palmer Street | |
| | On Dearborn Street | |
| | On Jefferson Street | |
| | On Harrisburg Avenue | |
| | On Longfellow Drive | |
| | On Longfellow at Junction of New Gorham Road | |
| | On Huntress Avenue | 9-14-70 |
| Longfellow Drive | On Anne Terrace | 8-2-72 |
| | At Lori Lane (3-way) | 4-25-94 |
| Longley Road | On Hammond Road | 9-14-70 |
| | On Fales Road | 9-9-85 |
| | On Graham Road | 9-9-85 |
| Lurgin Street | On Ennis Street | 9-14-70 |
| Lyman Street | On Prince Street, (4-way) | 11-3-97 |
| Lori Lane | At Longfellow Drive (3-way) | 4-25-94 |
| Main Street | On Larrabee Road (Traffic Signals) | 8-2-72 |
| | On Colonial Avenue | |
| | On Webster Avenue | |
| | On Deer Hill Avenue | |
| | On Marrett Street | |
| | On Berkely Street | |
| | On Tolman Street | |
| | On Mason Street, East and West | |
| | On State Street | |
| | On Seavey Street | |
| | On Maple Avenue | |

| Intersection | | Date Adopted |
|-----------------|--|--------------|
| | On Rochester Street | |
| | On Haskell Street | |
| | On Locust Street | |
| | On Stevens Avenue | |
| | On School Street | |
| | On Spiers Street | |
| | On Day Street | |
| | On Giles Street | |
| | At Riverbank Park | 9-14-70 |
| | On Dunn Street | |
| | On Foster Street | |
| | On Pleasant Street | |
| | On Spring Street (Traffic Signals) | |
| | On Stroudwater Street | |
| | On Ash Street | |
| | On Brackett Street | |
| | On Mechanic Street | |
| | On Dana Street | |
| | On Mill Street | |
| | On Park Hill Road | |
| | On Westbrook Arterial Highway (Traffic Signals) | 8-2-72 |
| McKesson | At County Road | 6-20-83 |
| Maple Street | On Pennell Street | 8-16-65 |
| Marilyn Avenue | At Woodland Road (4-way) | 3-22-93 |
| Marlu Street | On Temple Street | 11-18-85 |
| | At Carlson Street (4-way) | 7-6-92 |
| Mason Street | On Newcomb Place | |
| | On Oak Street | |
| Mayberry Road | On Emery Street | 9-14-70 |
| | On Bell Street | 9-14-70 |
| Mechanic Street | On Quimby Avenue, East and West | |
| | On West Valentine Street | 4-2-90 |
| | On Green Street | |
| Merrill Road | At Hardy Road | 12-21-87 |
| Mitchell Street | On Chestnut Street | 9-14-70 |
| | On Kennard Street | 9-14-70 |
| | On Walton | |
| | On Monroe Court | 9-14-70 |
| | On Sunset Court | 9-14-70 |
| | On Woods Road | 9-14-70 |
| Myrtle | On Prince Street (4 way) | 3-4-02 |
| New Gorham Road | On Lori Lane | 8-2-72 |
| | On Fairlawn Avenue | 9-14-70 |
| | On Longfellow Drive | 9-14-70 |

| Intersection | | Date Adopted |
|------------------|--------------------------|--------------|
| | On Williams Street | 9-14-70 |
| | On Longfellow Street | |
| North Street | On Cole Street | 9-14-70 |
| | On Prince Street | 9-14-70 |
| | On River Street | 9-14-70 |
| Oak Street | At Lamb Street (4-way) | 11-1-93 |
| Oakland Avenue | On Walton Street | |
| Park Road | On Longley Road | |
| | On East Bridge Street | |
| | On Hammond Road | 9-14-70 |
| Park Hill Road | On Woods Street | 9-14-70 |
| Pennell Street | On Middle Street | 9-14-70 |
| Pierce Street | On Chestnut Street | 9-14-70 |
| | On Falmouth Street | 9-14-70 |
| | On Kennard Street | 9-14-70 |
| | On Nasson Avenue | 9-14-70 |
| Pleasant Street | On Doyle Street | |
| | On Sargent Street | |
| Prince Street | On Roy Avenue | 9-14-70 |
| | At King Street (4-way) | 9-3-91 |
| | At Lyman Street (4-way) | 11-3-97 |
| Prospect Street | On Central Street | 1-20-75 |
| Quimby Avenue | On West Pleasant Street | |
| Robyn Avenue | On Marrett Street | 9-14-70 |
| | On Tolman Street | 9-14-70 |
| Rochester Street | On Lamb Street | |
| | On Park Street | |
| | On Pine Street (4-way) | 9-23-02 |
| Route 25 | On Conant Street | |
| Saco Street | On Bernadette Street | |
| | On Eleanor Avenue | 9-9-69 |
| | On Green Street | |
| | On Lucille Street | |
| | On Prospect Street | |
| | On Quimby Avenue | |
| | On Turner Street | |
| | On West Valentine Street | |
| Scott Drive | At County Road | 12-21-87 |
| Seavey Street | On Cottage Street | |
| | On Gray Street | |
| | On Oak Street | |
| Spring Street | On Allen Avenue | |
| | On Anderson Avenue | |
| | On Eisenhower Drive | |
| | On East Valentine Street | 9-14-70 |

| Intersection | | Date Adopted |
|----------------------|-------------------------------------|---------------------|
| | On Glenwood Avenue | |
| | On Union Street | |
| | On Trailer Park Entrance | 9-14-70 |
| Stroudwater Street | On Hawkes Street | |
| | On Highland Avenue | |
| | On Lawrence Avenue | |
| | On Monroe Avenue | |
| | On Oakland Avenue | |
| | On Pleasant Street | |
| | On Rochester Street | |
| | On Stroudwater Place | |
| | On Woodlawn Avenue | |
| Summit Circle | On Austin Street | 7-25-88 |
| Sunset | On Monroe Avenue | 10-25-87 |
| Tolman Street | On Tolman Court | 9-14-70 |
| Turner Street | On Canal Street | 9-14-70 |
| Thomas Drive | At County Road | 11-22-82 |
| | At Spring Street | |
| Union Street | On Little Avenue | 8-16-65 |
| | On Middle Street | 9-14-70 |
| | On McKinley Avenue | 9-14-70 |
| | At Maple Street (4-way) | 9-14-70; 5-15-06 |
| | On Roosevelt Street | 9-14-70 |
| Walker Street | On Webb Street | 9-14-70 |
| | On Pike Street | 9-14-70 |
| Waltham Street | On Oak Street | 9-14-70 |
| Wayside Drive | At Brackett Street | 8-2-72 |
| | At Central Street | 8-2-72 |
| | At Church Street | 8-2-72 |
| | At Hawkes Street | 3-22-72 |
| | At Conant Street | 8-2-72 |
| | At Main Street (Traffic Signal) | 8-2-72 |
| | At New Gorham Road (Traffic Signal) | 8-2-72 |
| | At Pleasant Street | 8-2-72 |
| | At Mechanic Street | 8-2-72 |
| | At Saco Street (Traffic Signal) | 8-2-72 |
| Webb Street | On Dodge Street | 9-14-70 |
| West Pleasant Street | On Green Street, East and West | |
| | On Mechanic Street | 4-2-90 |
| Woodland Road | At Marilyn Avenue (4-way) | 3-23-93 |
| Woodlawn Avenue | On Rochester Street | 12-15-75 |

Schedule II. Yield Signs

| Intersection | | Date Adopted |
|---------------------|---|---------------------|
| Cumberland Street | On Warren Avenue, Northerly Side | |
| Forest Street | On Cottage Street, Easterly Side | |
| Main Street | On Cumberland Street (Island) | |
| | On Larrabee Road, Northwesterly Direction | 3-22-72 |
| | On Larrabee Road, Southeasterly Side | 3-22-72 |
| Pride Street | On Austin Street | |
| Saunders Brothers | | |
| Sawyer Road | | |
| Forest Street Ramp | | |

Schedule III. Traffic Control Devices

R, Y & G = Red, Yellow and Green
 Ped. = Pedestrian

| Intersection | | Device |
|---------------------|--|--|
| Bridgton Road | At Brook & Pride Streets | R, Y & G Traffic Lights |
| Cumberland Street | At Bridge Street | R, Y & G Traffic Lights; Ped. Control Lights w/ Ped. Control Activator |
| Main Street | At Bridge Street | R, Y & G Traffic Lights; Ped. Control Lights w/ Ped. Control Activator |
| | At Forest Street | R, Y & G Traffic Lights; Ped. Control Lights w/ Ped. Control Activator |
| | Longfellow St/New Gorham Rd/ Wayside Dr. Junction | R, Y & G Traffic Lights; Ped. Control Lights w/ Ped. Control Activator |
| | At Westbrook Arterial | R, Y & G Traffic Lights |
| | At Larrabee Road | R, Y & G Traffic Lights |
| | At Cumberland Street | Ped. Control Light |
| | At Spring Street | R, Y & G Traffic Lights; Ped. Control Lights w/ Ped. Control Activator |
| Spring Street | At Wayside Drive | R, Y & G Traffic Lights; Ped. Control Activator |
| | At County Road | R, Y & G Traffic Lights w/ Left Turn Arrows |
| Stroudwater Street | At Wayside | R, Y & G Traffic Lights; Ped. Control Activator |
| Wayside Drive | At Westbrook Arterial | R, Y & G Traffic Lights |
| Fire Station One | At Cumberland Street | Emergency Traffic Signals |

Schedule IV. One-Way Streets and Parking Lot Exits

| One-Way Streets | |
|------------------------|---|
| Butler Court | Brackett Street to Central Street – Westerly |
| Cottage Place | Northerly and easterly direction between Brown Street & Cumberland Street |
| Cumberland Street | Northwesterly direction between Maine Street and Warren Avenue |
| Cole Street | Northerly direction between Brown Street & North Street |
| Lamb Street | Southerly direction between Main Street and Oak Street |
| Main Street | Southerly direction between Warren Avenue and Cumberland Street |
| Pleasant Street | Easterly direction between Pleasant Street & Stroudwater Street and Southerly direction between Wayside Drive and Pleasant Street |
| Reserve Street | From Brown Street to River Street |
| River Street | From Reserve Street to North Street |
| Warren Avenue | Westerly direction between Cumberland Street & Maine Street |
| Winslow Street | Northeasterly direction between Bridge Street and Lincoln Street |

| Parking Lot Exits | |
|--------------------------|---|
| Bank of America Entrance | One way northerly from Main Street to Parking Lot D (Beside Bank of America) adjacent to the bank and parking lot G |
| TD Banknorth | One way in northwesterly direction existing from parking lot behind TD Banknorth to the Ash Street Spur |

Schedule V-A. Parking Prohibited.

| Street | No Parking Zone | Date Adopted |
|------------------|--|---------------------|
| Arlington Avenue | Easterly side from Bernadette Street to Huntress Avenue | 12-1-08 |
| Ash Street Spur | Both sides | 7-2-79 |
| Berkeley Street | Along both sides of Berkeley Street, fifty feet back from its intersection with Main Street | 11-26-07 |
| Brackett Street | Easterly side from junction of Burnham Street extending in southerly direction for 300 feet | |
| | Intersection of Wayside Drive for a distance of 20 feet of nearest line of an crosswalk marked or unmarked | 8-2-71 |
| | Westerly side from Wayside Drive southerly to Prospect Street (excluding 50' strip reserved for 15 minute parking, opposite 100 Brackett Street) | 3-20-78 |
| | 25 feet either/both sides of driveway for #64 | 7-20-87 |
| | Five (5) feet of either side of the driveway located at 52 Brackett Street | 12-6-10 |
| Bridge Street | From a point 235 feet northerly of the northwest | |

| Street | No Parking Zone | Date Adopted |
|---------------|--|--------------|
| | side of Presumpscot River Bridge and continuing for 142 feet in northerly direction | |
| | Westerly side from Wayside Drive southerly to Prospect Street (excluding 50' strip reserved for 15 minute parking, opposite 100 Brackett Street) | 3-20-78 |
| | 25' from either/both sides of driveway for #64 | |
| Bridge Street | From a point of 235 feet northerly of the northwest side of Presumpscot River Bridge and continuing for 142 feet in northerly direction | |
| | Westerly side of Bridge Street between Main Street and Presumpscot River Bridge | 7-21-75 |
| | Easterly side of Bridge Street between Main Street and Presumpscot River Bridge | 7-21-75 |
| | Easterly side of Bridge Street between Presumpscot River Bridge and Brown Street | 8-19-85 |
| | Easterly side from Winslow Street to Lincoln Street in a northerly direction | 8-19-85 |
| | Northwesterly side 130' in southwesterly direction from Cumberland Street | 7-2-84 |
| | Easterly side from center line of Cumberland Street to southerly property line of Lot 55, Map 44 | 6-17-85 |
| | Westerly side from a point of the northerly side of the Presumpscot River Bridge to loading dock opposite Brown Street | 8-19-85 |
| | Southwesterly side from corner of Lincoln Street to Eagles Club (#98) driveway | 9-15-93 |
| Brown Street | Northerly side from Cumberland Street to Mentor Street | 9-14-65 |
| | Southerly side from Bridge Street to Walker Street except on Sundays | 12-11-72 |
| | Intersection of Cumberland Street to 90 feet southeasterly side in westerly direction | 2-6-89 |
| | From Bridge Street and extending 600 feet on the northerly side, between the hours of 7:00am and 12:00pm on Wednesdays | 1-11-10 |
| Bridge Street | From the northerly side of Brown street to the fire hydrant | 6-19-06 |
| Bridgton Road | Starting at curb intersection points on Bridgton Road and extending southerly a total distance of 100' on both sides of road | 10-9-72 |
| | Starting at curb intersection points and extending northerly 200' on westerly side for total of 50' on easterly side of the road | 10-9-72 |
| | 900' northerly from Pride's (Riverton) Bridge on both sides of road | 9-21-92 |
| Brook Street | Starting at the curb intersection points on Brook | 12-1-86 |

| Street | No Parking Zone | Date Adopted |
|-------------------|--|-------------------|
| | Street and extending easterly a total distance of 100' on the northerly side and a total distance of 75' on the southerly side | |
| Burnham Street | Southerly side from Brackett Street to Fitch Street, both sides | 12-1-86 |
| Butler Court | Southerly side of Butler Court | 9-11-00 |
| Central Street | Intersection of Wayside Drive for a distance of 20' of the nearest line of any crosswalk marked or unmarked | 8-2-71 |
| | Easter side from a point 150' from intersection with Cross Street for a distance of 350' | 7-11-83; 10-13-80 |
| Church Street | Westerly from William Clarke Drive to southerly end of Church Street | 12-17-12 |
| Cloudman Street | Northerly side between Dunn Street & Foster Street | |
| | Foster Street to Cloudman Court during school hours 8:00 a.m. to 3:00 p.m. | 12-22-69 |
| Cole Street | Westerly side from Brown Street to pole J5 | 7-20-87 |
| | Easterly side from opposite Pole j5 to North Street | 11-7-88 |
| Colonial Road | Easterly side from Main Street to the end | 9-15-93 |
| Conant Street | Intersection of Wayside Drive for a distance of 20' of the nearest line of any crosswalk marked or unmarked | 8-2-71 |
| Cross Street | Southerly side from Brackett Street to Central Street | 7-20-92 |
| | Northerly side between Church and Brackett Street | 10-1-12 |
| County Road | Starting at curb intersection on Route 22 (County Road) and extending easterly 400' on both sides of the road | 9-13-76 |
| | Starting at curb intersection on Route 22 (County Road) and extending westerly 400' on both sides of the road | 9-13-76 |
| | Both sides between CMP pole #11 and CMP pole #20 | 5-4-09 |
| Cumberland Street | Easterly side from Warrant Avenue to Brown Street | 11-27-67 |
| | Westerly side from Warren Avenue southerly for 110 feet | |
| | Westerly side from Warren Avenue northerly for 110 feet | |
| | Westerly side from Brown Street northerly for 40 feet | |
| | Westerly side between southerly side of Presumpscot River Bridge to Brown Street | |
| | Easterly side from Warren Avenue in northerly direction to Presumpscot River Bridge | |

| Street | No Parking Zone | Date Adopted |
|-----------------------|---|--------------------|
| | Easterly side from northerly exit of Northeast Bank property southerly for 25 feet | 9-19-77 |
| | Northeasterly side for 200 feet from intersection of Bridge Street | 2-11-85 |
| Dana Court | Southerly side (River Side) from Bridge Street for approximately 437 feet. Northerly for 330 feet from the intersection with Bridge Street. | 12-30-85, 12-17-12 |
| Duck Pond Road | Both sides between Brighton Road and Mast Road | |
| | Both sides at intersection of Elmwood Avenue northerly for 890' or to CMP power pole J145 | 8-5-74 |
| East Bridge Street | North side between #564 and #636 | 9-8-98 |
| East Valentine Street | Southerly side from String Street to Brackett Street | 4-17-73 |
| Elmwood Avenue | Both sides from intersection of Route 302 in northerly direction for 360 feet | 6-20-83 |
| Fitch Street | Westerly side between Cross Street and Burnham Street – Both sides | 7-17-78; 12-1-86 |
| Foster Street | Westerly side except for a distance of forty (40) feet from the intersection with Main Street | 4-12-86; 5-14-12 |
| | Easterly side | 2-6-84 |
| Forest Street | Easterly side from Main Street south to Oak Street | |
| | Easterly side from Newcomb Place, North to Portland Terminal Co. easement | 2-23-95 |
| | On traffic divider between Newcomb Place and Forest Street | 1-23-95 |
| Garfield Street | Westerly side | 9-17-01 |
| Giles Street | Westerly and Northerly sides (right hand side travelling in from Main Street) | 7-7-08 |
| Handicapped Parking | Ordinance addition | 7-6-82 |
| Haskell Street | Northeasterly side from Main Street for 105 feet | 2-2-87 |
| Hawkes Street | Winter months – See Schedule V-B | |
| Huntress Avenue | Westerly side from Arlington Avenue to Alphonse Street | 8-20-79 |
| High Street | Westerly side from Brown Street to its terminus | 10-21-85 |
| Knight Street | Westerly side from Brown Street to its terminus | 10-21-85 |
| Larrabee Road | Entire length | 8-2-71 |
| Lincoln Street | Southerly side from Bridge Street to Winslow Street | 12-30-85 |
| | Northerly side from Bridge Street a distance of 402' in a westerly direction | |
| | Easterly side from Bridge Street in a southeasterly directing in a distance of 50 feet | 11-2-01 |
| | Westerly side from Bridge Street to in a northwesterly direction for a distance of 50 feet | |
| Main Street | Northerly side from Bridge Street to Northeast Bank driveway 246' easterly | 7-21-75 |

| Street | No Parking Zone | Date Adopted |
|--------------------------|--|-----------------|
| | Both sides from Colonial Road to Westbrook/Portland line | |
| | Southerly side between Saco Street & Longfellow Street | |
| | Southerly side from Spring Street Intersection 90 feet in easterly direction | 10-25-83 |
| | Northerly side from point 25 feet easterly of Post Office driveway 200 feet in a westerly direction 7 a.m. to 7 p.m. except during funerals | 10-25-83 |
| | Westerly side entering Dairy Queen to the corner of Webster Avenue | 11-4-69 |
| | Both sides from Haskell Street to School Street | 8-2-71 |
| | No parking anytime in front of 790 Main Street driveway to Spring Street | 7-17-72 |
| | North side from E.G. Olsen & Sons to Spiers Street westerly | 6-3-74 |
| | Southerly side 849 feet from Mechanic Street to Church Street | |
| | Northerly side 108 feet westerly from Bridge Street | 7-21-75 |
| | Northerly side 25 feet easterly of Post Office driveway | |
| | Area in front of 434 Main Street | 3-5-12 |
| New Gorham Road | Intersection Wayside Drive prohibited parking on Main Street from Saco Street to Wayside Drive | 8-2-71 |
| Marilyn Avenue | Beginning 351 feet northwesterly of the Woodland Road and Marilyn Avenue intersection “No Parking on Curve” for westbound traffic | 12-17-90 |
| Mason Street | Westerly side, North of Main Street | |
| Mayberry Street | Both sides from Bell Street to Lincoln Street | 7-28-75 |
| Mechanic Street | Easterly side from Quimby Avenue in a southerly direction for 680 feet | 4-19-88 |
| | Both sides from Main Street southerly to Wayside Drive (Except for posted 15 minute parking, see Schedule VI, Parking Limited) | 7-11-77; 9-3-91 |
| | Intersection of Wayside Drive for a distance of 20 feet of nearest line of any crosswalk marked or unmarked | 8-20-79 |
| | Easterly side from Wayside Drive southerly a distance of 537 feet | 8-20-79 |
| Mentor Street | Easterly side | 9-17-01 |
| Monroe Avenue & Glenwood | Easterly side of both streets for 25 feet from where they actually intersect. The easterly side of these streets shall be considered the intersection side nearest the Canal School. | 11-5-01 |
| Newcomb Place | Southerly side | 1-23-95 |

| Street | No Parking Zone | Date Adopted |
|------------------|--|--------------|
| | On traffic divider between Forest Street and Newcomb Place | 1-23-95 |
| New Gorham Road | Intersection Wayside Drive, from Longfellow Street to Wayside Drive | 8-2-71 |
| Oak Street | Southerly side between Seavey Street and Lamb Street | |
| | Northerly side between Seavey Street and Lamb Street | 2-27-84 |
| | Southerly side between Lamb Street and Forest Street | 8-19-96 |
| | Northerly side between Lamb Street and Forest Street | 8-19-96 |
| Park Hill | Easterly side from Main Street in a northerly direction for 100 feet | |
| Pleasant Street | Easterly side from Main Street to Wayside Drive | 12-1-86 |
| | Intersection of Wayside Drive for a distance of 20 feet of nearest line of any crosswalk marked or unmarked | 8-2-71 |
| Pierce Street | Westerly side in northerly direction from Bridge Street to Mayberry Road | 8-5-74 |
| Pike Street | Southeasterly side for a distance of 200 feet southeasterly from intersection of Walker Street | 1-15-79 |
| | Northerly side | 10-1-12 |
| Pride Street | Starting at curb intersection points on Pride Street and extending westerly a total distance of 100 feet on the northerly side and a total of 160 feet on the southerly side of the street | 10-9-72 |
| Quimby Avenue | Southerly side from Saco Street to Mechanic Street | |
| Reed Street | On the northerly side of Reed Street in a westerly direction approximately 30 feet from the intersection with Bridgton Road | 2-6-12 |
| Reserve Street | Westerly side, point 145 feet from Brown Street to southerly terminus, 7:00 a.m. to 5:00 p.m. weekdays | 11-23-87 |
| Rochester Street | Both sides from Main Street in a southerly direction | |
| | Easterly side 100 feet from Main Street | 3-22-88 |
| | Westerly side between Main Street and Railroad tracks | |
| Saco Street | Intersecting Wayside Drive from Main Street to Quimby Avenue | |
| | Both sides from Main Street to West Valentine Street | 4-23-75 |
| | 15 minute loading zone in front of #117 Saco Street | |
| | Areas adjacent to the Hamlet Coach Park entrances | 5-15-06 |

| Street | No Parking Zone | Date Adopted |
|--------------------|--|--------------|
| Sargent Street | Winter months – See Schedule V-B | |
| | From #45 to #62 | 8-19-96 |
| Spiers Street | Right hand side for 200 feet commencing at Main Street | 12-11-72 |
| Spring Street | Intersection of Wayside Drive for a distance of 20 feet of the nearest line of any crosswalk, marked or unmarked | 8-2-71 |
| | Both sides intersection Wayside Drive to Allen Avenue | 8-85 |
| | Westerly side from Main Street to Wayside Drive | 7-17-73 |
| | Both sides within 75 feet on the northerly and southerly intersection of Wayside Drive | 4-17-73 |
| | Both sides starting at curb intersection (County Road) expending northerly on Spring Street 400 feet | |
| | Both sides starting at curb intersection (County Road) extending southerly on Spring Street to South Portland line | 4-19-88 |
| | Easterly side from Art's Variety to Anderson Avenue | 3-15-99 |
| Stevens Avenue | Even numbered side | 5-6-96 |
| Stroudwater Street | Intersection of Wayside Drive for a distance of 20 feet of the nearest line of any crosswalk marked or unmarked | 8-2-71 |
| | Northerly approach 40 feet on the westerly side from the northerly extended curb line of Wayside Drive | 3-22-72 |
| | Northerly approach 140 feet on the easterly side from the northerly extended curb line on Wayside Drive | 3-22-72 |
| | Southerly approach 40 feet on easterly side from the southerly extended curb line on Wayside Drive | 3-22-72 |
| Stroudwater Street | Easterly side of street from 30 feet adjacent to each of the Armory entrances | 9-27-99 |
| Stroudwater Street | Westerly side of street from intersection with Oakland Road to Westbrook Regional Vocational Training Center School access road (Vocational Drive) | 9-27-99 |
| Stroudwater Street | Northerly and southerly sides from Forest Street in a northeasterly direction to Oakland Avenue | 11-05-01 |
| Stroudwater Street | Both sides between Forest Street and Laffin Drive | 7-7-08 |
| Taggart Avenue | Easterly side from intersection of Lawrence Street 100 feet | 12-19-79 |
| Teri Circule | Both sides from Prospect Street northerly to its terminus including a turnaround | 5-1-78 |
| Thomas Drive | Northerly side from Spring Street to County Road | 4-21-92 |

| Street | No Parking Zone | Date Adopted |
|----------------------|--|--------------|
| | Southerly side from 6:00am to 6:00pm | 8-4-08 |
| Union Street | No parking/tow away zone, end of Union Street (Emergency basis) | 10-21-85 |
| Warrant Avenue | Northerly side from Cumberland Street in a westerly direction to Main Street intersection | 10-4-82 |
| | Southerly side between Cumberland and Main Street | |
| | Southerly side from Cumberland Street in an easterly direction for 165 feet | |
| | Northerly side from Morton street to a point in a westerly direction for 1050 feet | |
| Water Street | Southerly side | 9-17-01 |
| Wayside Drive | Parking prohibited the entire length including no parking on side streets intersecting Wayside Drive for a distance of 20 feet of the nearest line of any crosswalk, marked or unmarked, streets are: Brackett street, Central Street, Church Street, Conant Street, Mechanic Street, Pleasant Street, Spring Street, Stroudwater Street | |
| Webster Avenue | Easterly side from Main Street for 115 feet | 2-2-87 |
| | Easterly side from Main Street to end | 9-15-93 |
| West Pleasant Street | Easterly side from Quimby Avenue in a southerly direction for 470 feet | |
| Westbrook Arterial | Entire length | 8-2-71 |
| Winslow Street | Northerly side, entire length | 10-7-96 |

Municipal Parking Lots

- A. Overnight parking in municipal parking during declared snow emergency prohibited except for temporary exemptions.
- B. Commercial vehicle parking overnight prohibited.
- C. The Public Works Director is authorized to designate snow emergency parking area. (11-21-94)

Municipal Parking Lot Access Roads – Parking Prohibited

- (1) Both sides of access road to Lot A and Lot B from Mechanic Street easterly and southerly to Wayside Drive.
- (2) Both sides of access road to Lot D from Bridge Street easterly 200 feet. (12-4-78)
- (3) Parking prohibited both sides of Ash Street Spur. (7-2-79)

Fire Lanes

- (1) Winslow Street: both sides for distance of 55 feet easterly from its intersection with Bridge Street

Schedule V-B. Parking Prohibited in Winter Months

| Street | No Parking Zone | Date Adopted |
|------------------------|--|---------------------|
| Hawkes Street | Parking prohibited southerly side from 140 feet to 175 feet from southwesterly side line of Haskell Street | 5-24-82 |
| Sargent Street | Easterly side from Pleasant Street to its terminus (Nov. 15 – April 15) | 3-7-83 |
| Municipal Parking Lots | Parking is prohibited during declared snow emergencies, except in designated areas | 11-21-94 |

Schedule VI. Parking Limited and Handicapped Parking

| Street | Zone | Date Adopted |
|---|---|---------------------|
| 10 MINUTE PARKING | | |
| Main Street | N/A | 3-14-79 |
| | N/A | 3-3-86; 4-25-07 |
| 15 MINUTE PARKING (amended 6/6/11) | | |
| Brackett Street | 50 feet strip opposite 100 Brackett – All vehicles | 8-19-85 |
| Bridge Street | Northerly side from Winslow Street westerly (2 spaces) | 4-21-92 |
| | Northerly side (in front of old nursing home) 2 spaces from Brown Street westerly to (but not blocking) the Fire Hydrant | 4-21-92 |
| | 2 spaces adjacent to raised crosswalk by Mission Possible | 6-22-98 |
| Brown Street | Southeasterly side from crosswalk at Brown/North Streets 40' in a northeasterly direction | 10-19-85 |
| Forest Street | Northerly side from Forest Street School parking lot entrance to corner of Main Street | 6-06-94 |
| Main Street | N/A | 4-25-07 |
| | N/A | 10-21-85; 4-25-07 |
| | N/A | 3-03-86; 4-25-07 |
| | In front of #543 Main Street (2 spaces) | 9-12-88 |
| | In front of #424 from 7:00 a.m. to 7:00 p.m. (2 spaces) | 7-06-92 |
| | At rear entrance to 846 Main Street | 11-26-07 |
| Mechanic Street | 20' from end of driveway entrance at Marty's Variety in a northerly direction to existing "no parking" sign | 9-03-91 |
| North Street | Northeasterly side 251 feet southeasterly of Brown Street in a southeasterly direction | 10-19-85 |

| Street | Zone | Date Adopted |
|--------------------------|---|-------------------------------|
| 30 MINUTE PARKING | | |
| Brown Street | Northerly side 50' westerly from a point 150' westerly of Brown/North Street intersection | 12-30-85 |
| Cumberland Street | Both sides from its southerly terminus in a northerly direction to the No Parking Zone abutting the RR tracks unless otherwise designated | 9-19-77 |
| Main Street | Both sides from Lamb Street northwesterly to the RR track | 9-19-77 |
| | Amended | 5-10-82 |
| | N/A | 10-03-88; 4-25-07 |
| | One space in front of #747 Main Street | |
| North Street | Northerly side from a point 25' easterly of Brown Street, easterly a distance of 30' | 8-19-85 |
| ONE HOUR PARKING | | |
| Bridge Street Spur | 3 spaces on right side of Bridge Street spur leading to Main Street. | 8-2-10 |
| Lamb Street | One hour parking 8:00 a.m. to 5:00 p.m. westerly side extending 200' from Main Street | |
| Main Street | One hour parking 8:00 a.m. to 5:00 p.m. northerly side beginning at junction of Main Street and Warren Avenue extending in westerly direction to the RR tracks | |
| | One hour parking 7:00 a.m. to 10:00 p.m. both sides of Main street from Saco Street to Pleasant Street on the north side and Foster Street on the south side, unless otherwise designated | 1975; 4-25-07 |
| | Northerly side of Main street from RR tracks (near Rochester Street) to Locust Street | |
| | 9 a.m. to 5 p.m. Monday to Friday, both sides of Street in front of #706; | 9-15-93 10-2-06 4-25-08 |
| Warren Avenue | One hour parking 8:00 a.m. to 5:00 p.m. northerly side beginning at a point 170' from Cumberland Street extending to the junction of Main Street & Warren Ave | |
| TWO HOUR PARKING | | |
| Ash Street | All vehicles shall be limited to 2 hour parking between the hours of 8:00 a.m. and 8:00 p.m. each day except Sundays on both sides of Ash Street from Main Street northerly to its terminus | |
| Brown Street | At Cumberland Street in front of #10, 8:00 a.m. to 8:00 p.m. (Delete Order 6, 2-06-89) | 9-12-88 |
| Cross Street | Southerly side from Brackett Street to Church | 12-17-12 |

| Street | Zone | Date Adopted |
|-------------|---|--------------|
| | Street | |
| Main Street | On northerly side of Main Street for a distance of 150' in an easterly direction from the easterly side of Foster Street; | 4-25-07 |
| | | 10-2-06 |
| | On easterly side from Pleasant Street northeasterly to Dunkin Donuts parking lot entrance; EXCEPT on Sundays & Holidays; | 6-06-94 |

MUNICIPAL PARKING LOT IDENTIFICATION KEY

The following parking lots shall be identified according to the letter indicated in the following table:

| | |
|-------|---|
| Lot A | Located between the rear of 870 to 900 Main Street and north side of William Clarke Drive |
| Lot B | Located on the west side of Church Street and to the rear of 838 to 850 Main Street |
| Lot C | Located on the east side of Church Street and to the rear of 2 Church Street to 810 Main Street |
| Lot D | Located at the end and on the east side of Ash Street |
| Lot E | Located between 835 and 849 Main Street |
| Lot F | Located between the south side of the Presumpscot River and the rear of 849 Main Street to 11 Bridge Street |
| Lot G | Located between Bridge Street Spur and 869 Main Street |
| Lot H | Located behind 850 and 851 Main Street |
| Lot I | Located between 900 Main Street and Mechanic Street |

30 MINUTE PARKING – MUNICIPAL PARKING LOTS (8:00 a.m. to 8:00 p.m.)

All vehicles shall be limited to thirty minute parking between the hours of 8:00 a.m. and 8:00 p.m. each day except Sundays in the following portions of the DOWNTOWN MUNICIPAL PARKING LOTS:

- Lot F: Two spaces behind the building of 11 Bridge Street (Ord. of 3-3-14)
- Lot H: All spaces in the row facing the businesses.

2 HOUR PARKING - MUNICIPAL PARKING LOTS (8:00 a.m. to 8:00 p.m.)

All vehicles shall be limited to two hour parking between the hours of 8:00 a.m. and 8:00 p.m. each day except Sundays in the following portions of the DOWNTOWN MUNICIPAL PARKING LOTS:

- Lot A: 4 Rows directly behind, and running perpendicular to, 888 to 894 Main Street (1-5-09)
- Lot B: All spaces closest to William Clarke Drive and Main Street (1-5-09)
- Lot C: The first seven spaces closest to Church Street in the row closest to William Clarke Drive and Main Street (1-5-09)
- Lot E: All Spaces
- Lot F: All spaces except the 2 spaces behind the building at 11 Bridge Street (3-3-14)
- Lot G: All spaces
- Lot I: All spaces

**ALL DAY (8 HOUR) EMPLOYEE PARKING - MUNICIPAL PARKING LOTS
(8:00 a.m. - 5:00 p.m.)**

All vehicles shall be allowed unlimited between the hours of 8:00 a.m. to 5:00 p.m. each day, in the following portions of the DOWNTOWN MUNICIPAL PARKING LOTS:

- Lot A: All spaces except those identified as two hour parking (Ord. of 8-2-10)
- Lot D: All spaces
- Lot B: All spaces not identified as two hour parking
- Lot C: All spaces not identified as two hour parking

Municipal Parking Lot Access Roads: Parking prohibited on both sides of the Access Road to Lot A from Mechanic Street easterly & southerly to Wayside Drive.

Handicapped Parking:

- (1) Bridge Street: 2 spaces adjacent to raised crosswalk by Mission Possible (6-22-98)
- (2) Brown Street: In front of St. Hyacinth's Church during Church Services (12-19-83)
- (3) Church Street municipal parking lot: 3 spaces (5-15-06)
- (4) Main Street: parking Lot B, rear of Laverdiere's
- (5) Westbrook-Warren Congregational Church: 2 spaces, City lot in rear (9-03-91)
- (6) Mechanic Street: 4 spaces, westerly side of street, between William Clarke Drive and Quimby Ave (4-25-05)

Driver Occupied Vehicles Only:

- (1) Forest Street - Western side from Main Street, extending 340 feet north

Schedule VII. Loading Zones

| Street | Loading Zone | Date Adopted |
|---------------|--|---------------------|
| Bridge Street | No parking, Truck Loading Zone easterly side 30 feet southerly from Winslow Lane | 12-17-90 |
| | No parking, Loading Zone at Westbrook Spinning Mill's loading area in the Dana Warp Building | 9-8-98 |

| | | |
|----------------------|--|---------|
| Main Street | 15 Minute Loading Zone in front of #616 Main Street commencing 25 feet from intersection of Main and School Streets in a westerly direction fro a distance of fifty feet on the southerly side of Main Street, 8:00 a.m. to 5:00 p.m., except on Sundays | 6-21-76 |
| Saco Street | 15 Minute Loading Zone in front of #117 | 4-22-75 |
| Parking Lot A, Annex | (Corner Maine & Mechanic Streets) 15 Minute Truck Loading Zone – 2 spaces northeasterly corner of Lot A, Annex nearest Main Street adjacent to #400 Main Street (Hub Furniture) from 7:00 a.m. to 6:00 p.m. | 6-20-83 |
| City Lot D | 22 feet wide by 32 feet deep loading space at rear of 855 Main Street at westerly corner of former McLellan's Building | 5-4-98 |

Schedule VIII. Bus Stops

| Pole | Outbound | Pole | Inbound |
|-------------|---------------------------|-------------|--------------------|
| 84 | Shopping Center | 20 | New Gorham Road |
| 88 | Midblock | 14 | Lori Lane |
| 94 | Midblock | 12 | Midblock |
| 1 | Colonial Road | -- | Williams Street |
| -- | Webster Avenue | 5 | Saco Street |
| 87 | Mason Street | 88 | Mechanic Street |
| 80 | Lamb Street | -- | Vallee Square |
| 2 ½ | Warren Avenue | 22 | Church Street |
| 502 | Main & Cumberland Streets | -- | Walker Library |
| 62 | Rochester Street | 60X | Stroudwater Street |
| 51 | Spiers Street | 53 | Dunn Street |
| 4401 | Park | 44 | Park |
| 040 | Dunn Street | 50 | Day Street |
| 34.1 | Stroudwater Street | 58 | Haskell Street |
| 28.1 | Spring Street | 62 | Rochester Street |
| -- | Church Street | 72 | Main & Warren |
| 81 | Vallee Square | 75 | Seavey Street |
| -- | Park Hill Road | 81 | Lamb Street |
| 4S | Canal Street | 8 | Mason Street |
| 12S | Huntress Avenue | 93 | Berkeley Street |
| 13 | Anne Terrace | 121 | Shopping Center |
| 9 | Lori Lane | | |
| 20 | New Gorham Road | | |
| -- | Fire Barn | -- | End of Line |
| 18 | Cumberland & Brown | 33 | Midblock |
| 26 | Cottage Road | -- | Conant Street |
| 84 | Park Road | 5 | Saco Street |

| Pole | Outbound | Pole | Inbound |
|-------------|------------------------------|-------------|-----------------------------|
| | Bridge to Beechwood | 8S | Mechanic Street |
| J44 | Midblock | -- | Bridge Street |
| 41 | Falmouth Street | 40 | Brown Street |
| 15 | Bridge & Myrtle Streets | 36 | Dodge Street |
| 11 | Prince Street | 30 | St. Hyacinth's |
| 5? | Brown & Myrtle Streets | 25½ | North Street |
| -- | King Street | 23½ | King Street |
| 25X | North Street | 20 | Myrtle & Brown |
| -- | Walker Street | 5 | Midblock |
| J36 | Dodge Street | 11 | Prince Street |
| -- | Bridge & Brown Streets | 15 | Myrtle & Bridge Streets |
| -- | Main & Bridge Streets | -- | Falmouth Street |
| 81 | Vallee Square | J44S | Beechwood Street |
| -- | Park Hill Road | | Cumberland & Bridge Streets |
| -- | Wayside Drive | 34S | Park Road |
| 33 | Midblock | 26 | Cottage Road |
| -- | Pine Knoll & Conant | -- | Bridge & Brown |
| -- | End of Line | -- | Main & Bridge |
| 1 | Fire Station | | |
| 3½ | Quimby Avenue | | |
| 8 | -- | | Opposite each outbound |
| 11 | West Valentine Street | | Opposite each outbound |
| 13 | Green Street | | Opposite each outbound |
| 17 | -- | | Opposite each outbound |
| 20 | -- | | Opposite each outbound |
| 22 | Central and Prospect Streets | | Opposite each outbound |

Woodfords Corner to Prides Corner

| Pole | Outbound | Pole | Inbound |
|-------------|--------------------|-------------|-----------------------|
| 8S | East Bridge Street | -- | End of Line |
| 19SS | Villa Road | -- | Prides Corner |
| 267 | St. Edmunds Church | 6 | Midblock |
| 31 | Town House | 12 | Prides Corner |
| | | | Congregational Church |
| -- | Prides Corner | 30 | Midblock |
| -- | End of Line | 34 | Austin Street |
| | | -- | Woodland Road |
| | | -- | East Bridge Street |
| | | 35 | Independence Drive |
| | | 30 | Constitution Drive |
| | | 57 | Carlson Street |

Schedule IX. Taxi Zones

There shall be one (1) taxi stand on the Bridge Street spur approximately 37' from the intersection with Main Street. (12-17-12)

Schedule X. Left Turns and Right Turns

LEFT TURNS PROHIBITED AND LIMITED

| | | |
|--------------------|--|--------------|
| Doyle Street | From Doyle Street into Pleasant Street | (10-09-1972) |
| Sargent Street | From Sargent Street into Pleasant Street | (10-09-1972) |
| Stroudwater Street | From Stroudwater Street into Pleasant Street | (10-09-1972) |

RIGHT TURN ONLY

| | |
|-----------------------------------|--------------|
| Post Office Exit onto Main Street | (11-18-1985) |
|-----------------------------------|--------------|

RIGHT TURNS PROHIBITED AND LIMITED

Spring Street - No right turn onto Glenwood - Local traffic only from 6 to 9 am and 3 to 6 pm.
(3-15-1999)

Spring Street - No right turn onto Anderson - Local traffic only from 6 to 9 a.m. and 3 to 6 p.m.
(3-15-1999)

| | |
|---|--------------|
| Stroudwater Street from Stroudwater Street into Pleasant Street | (10-09-1972) |
|---|--------------|

Schedule XI. Commercial Vehicles Prohibited

COMMERCIAL VEHICLES PROHIBITED FROM USING CERTAIN STREETS

| | |
|----------------|--|
| Monroe Avenue | From Stroudwater Street to Glenwood Avenue |
| Oakland Avenue | From Stroudwater Street to the Circle at the end of the street |
| Main Street | On Main Street from the Arterial running West to Route 25 |

NO THRU TRUCKS

| | | |
|-------------------------|--|------------|
| Stroudwater Street | Over Woodlawn Avenue & Forest Street to Main Street (In accordance with City Code Sec. 22-72) | 6-07-1982 |
| New Gorham Road | From Wayside Drive to Gorham Town Line | 3-14-1983 |
| Longfellow Street | From New Gorham Road to Gorham Town Line | 3-14-1983 |
| Hawkes Street | From Stroudwater Street to Weyerhaeuser Plant | 2-04-1991 |
| Main Street | From Arterial running westerly to Route 25 | 11-16-98 |
| Mayfield Drive | From Hardy Road to Methodist Road | 9-25-1995 |
| East Bridge & Park Road | | 10-01-2001 |
| Austin & Pride Streets | | 10-01-2001 |

NO THRU COMMERCIAL VEHICLES

| | | |
|--------------------|-------------------------|------------|
| Glenwood Avenue | | 10-03-1988 |
| Anderson Avenue | | 10-03-1988 |
| Pierce Street | | 11-07-1988 |
| Methodist Road | (March 1 through May 1) | 3-06-1989 |
| Brook Street | (March 1 through May 1) | 3-06-1989 |
| Mast Road | (March 1 through May 1) | 3-06-1989 |
| Hardy Road | (March 1 through May 1) | 3-06-1989 |
| East Bridge Street | (March 1 through May 1) | 3-06-1989 |

Schedule XII. Speed Regulations

MAXIMUM SPEED LIMIT 15 MPH

| | | |
|----------------------|---------------|------|
| Juniper Lane | Entire Length | 1985 |
| Reserve Street | Entire Length | 1983 |
| River Street | Entire Length | 1983 |
| Riverbank Park Roads | | 1964 |
| Villa Road | Entire Length | 1984 |

MAXIMUM SPEED LIMIT 20 MPH

| | | |
|---------------|---------------|----------|
| Walker Street | Entire Length | DOT 1988 |
| Webb Street | Entire Length | DOT 1988 |

MAXIMUM SPEED LIMIT 25 MPH

| Street | Zone | Date Adopted |
|----------------------------|---|--------------|
| Austin Street Extension | Junction of Austin & Pride Streets to end | |

| Street | Zone | Date Adopted |
|--------------------|--|---------------------|
| Conant Street | From easterly junction of Route 25 in westerly direction to Westerly junction with Route 25, 0.04 mile | |
| East Bridge Street | From Methodist Road to Park Road | 8-20-1973 |
| Hardy Road | 25 mph Advisory Signs | DOT 1988 |
| Main Street | Starting at a point 0.05 miles westerly of the Portland/Westbrook Line and extending westerly to junction with Route 25 | |
| Saco Street | Starting at junction of Main Street & extending to a point opposite NET pole 6/J28 by the Stroudwater Bridge, 0.07 miles | |
| Spring Street | Starting at junction of Main Street & extending to a point opposite NET pole 43, 0.09 miles | |
| Stroudwater Street | Starting at junction of Main Street & extending to junction of Woodlawn Avenue | |
| Westbrook Arterial | Starting at the southerly end of Larrabee Road and/or at (Westbound) junction of Larrabee Road & Arterial on-ramp and extending through the ramp to the beginning of the 4-lane divided highway, 0.25 miles. | 6-20-88 |
| Westbrook Arterial | Starting at end of 4-lane divided Highway extending easterly through off ramp to junction of Larrabee Road, 0.25 miles. | 6-20-88 |

MAXIMUM SPEED LIMIT 30 MPH

| Street | Zone | Date Adopted |
|-------------------|---|---------------------|
| Austin Street | Junction with East Bridge to junction of Pride Street -(DOT Log) | |
| Bridge Street | Starting at the junction of Bridge and Cumberland Streets and extending over Bridge Street to junction with East Bridge Street and Methodist Road, 0.50 miles | |
| Brook Street | Starting at junction of Brook Street & Bridgton Road (Rt302) and extending northeasterly a distance of 1.25 miles (Falmouth line) (DOT log) | |
| Cumberland Street | Starting at junction of Cumberland and Main (Rt. 25) and extending northerly to a point opposite NET pole 66, 1.60 miles (DOT log) | |
| Elmwood Avenue | Starting at southern junction w/Rt. 302 and extending northerly over Elmwood Ave. to northern junction w/Rt. 302 (Bridgton Road) (DOT log) | |
| Lincoln Street | Starting at junction of Lincoln/Bridge Streets extending over Lincoln Street northerly to junction w/Mayberry Street 0.95 miles | |
| Longfellow Street | Starting at junction w/Longfellow Drive and extending over Longfellow Street to junction w/Rt. 25 (Main Street), 0.70 mile | |

| Street | Zone | Date Adopted |
|-----------------|--|---------------------|
| Mast Road | Starting at junction of Mast Road & Duck Pond Road and extending northerly to the Westbrook/Falmouth line, 0.55 mile (DOT log) | |
| Mayberry Road | Starting at junction of Pierce Street and extending easterly to its terminus, 0.3 miles (DOT) | |
| New Gorham Road | Starting at the junction of New Gorham Road & Longfellow Street & extending westerly to Westbrook/Gorham line, 0.60 miles (DOT log) | |
| Park Road | Starting at junction of Park Road and Cumberland Street & extending over Park Road to junction w/East Bridge Street, 0.80 miles (DOT log) | |
| Pierce Street | Starting at junction of Bridge and Pierce Streets & extending over Pierce Street to junction w/Cumberland Street 0.60 miles | |
| Pride Street | Starting at junction of Austin & Pride Streets and extending northeasterly II to junction of Rt. 302, 0.85 miles | |
| Saco Street | Starting at a point opposite NET/CMP pole 6/J28 near the Stroudwater Bridge and extending southerly to a point opposite NET pole J37, 0.30 miles (DOT) | |
| Spring Street | Starting at junction of Rt. 22 and extending southerly to the So. Portland line, 0.45 miles (DOT log) | |

MAXIMUM SPEED LIMIT 35 MPH

| Street | Zone | Date Adopted |
|--------------------|---|---------------------|
| Duck Pond Road | Starting at junction of Duck Pond Road and Elmwood Avenue extending over Duck Pond Road to junction w/RT. 302 (Bridgton Road), 2.40 miles (DOT log) | |
| East Bridge Street | Starting at junction of East Bridge Street and Park Road extending over East Bridge Street to junction w/Rt. 302 (Bridgton Road), 1.40 (DOT log) | |
| Larrabee Road | Starting at Westbrook/Portland line (Riverside Street) extending southerly to end of Road, 0.60 miles (DOT log) | |
| Main Street | Starting at Westbrook/Portland line and extending westerly to NET pole #102 | |
| Methodist Road | Starting at junction of Methodist Road and East Bridge Street and Bridge Street and extending northerly to junction w/Rt. 302, 3.30 miles (DOT log) | |
| Spring Street | Starting at a point opposite NET #43 and extending southerly to junction w/Rt. 22 (County Road) for a distance of 0.90 miles (DOT log) | |
| Stroudwater Street | Starting at junction of Woodlawn Ave and extending southerly to the Portland and Westbrook line, 1.10 miles | |
| Terminal Road | Starting at junction of Larrabee Road & extending | |

| Street | Zone | Date Adopted |
|--------------------------------|--|---------------------|
| | westerly to cul-de-sac, 0.30 miles (DOT log) | |
| Warren Avenue | Starting at Westbrook/Portland line and extending westerly to junction of Warren Ave. and Rt. 25 (Main St) (DOT log) | |
| Wayside Drive | Starting at junction of the Westbrook Arterial Highway & extending westerly to junction of Main St, 0.40 miles | |
| Westbrook Arterial (Eastbound) | Starting at a point 0.20 miles west of the easterly end of 4-lane highway and extending easterly 0.20 miles to end of 4-lane highway, 0.20 miles | 6-20-88 |

MAXIMUM SPEED LIMIT 40 MPH

| Street | Zone | Date Adopted |
|---------------------|---|---------------------|
| County Road (Rt 22) | Starting at westerly junction of Rts 22 and 9 in Portland and extending westerly to Westbrook/Scarborough line, 2.9 miles | |
| Cumberland Street | Starting at a point opposite NET #66 & extending northerly to the Westbrook & Windham line, 0.5 miles (DOT log) | |
| Hardy Road | Starting at the junction of Hardy Road and Rt 302 and extending to Westbrook/Windham line, 0.9 miles (DOT log) | |
| Saco Street | Starting at point opposite CMP/NET J37 & extending to Westbrook/Scarborough line 0.9 miles (DOT log) | |

MAXIMUM SPEED LIMIT 45 MPH

| Street | Zone | Date Adopted |
|--------------------------------|--|---------------------|
| Bridgton Road (Rt 302) | From Prides Corner westerly to a point just westerly of Duck Pond Road intersection | 3-30-73 |
| Cumberland Street | From Pole #66 to Windham line | |
| Westbrook Arterial (Eastbound) | Starting at junction of Wayside Drive & extending easterly to a point 0.2 miles west of the easterly end of the 4-lane divided highway, 0.8 miles | 6-20-88 |
| Westbrook Arterial | Starting at the east end of Westbound section of the 4-lane divided highway and extending westerly along the westbound lanes to its junction with Wayside Drive, 1.0 miles | 6-20-88 |

Schedule XIII. Publicly Owned Property - Fire Lanes

The Chief of Police may prohibit parking in any Municipal Parking Lot for the purpose of repairs or snow removal.

CITY HALL PARKING LOT

Parking restricted for City Hall & Library business. All other vehicles shall be towed at owner's expense. Effective Monday - Friday from 7:30 a.m. to 5:00 p.m.

MUNICIPAL PARKING LOTS

- A. One hour parking between 12:00 a.m. & 6:00 a.m. during Snow Emergencies.
- B. Parking prohibited between 12:00 a.m. & 6:00 a.m. during Snow Emergencies. (11-29-76)
- C. Parking prohibited between 12:00 a.m. & 6:00 a.m. during Snow Emergencies. (11-29-76)
- D. Parking prohibited between 12:00 a.m. & 6:00 a.m. during Snow Emergencies. (11-29-76)
- E. Parking prohibited between 12:00 a.m. & 6:00 a.m. during Snow Emergencies. (11-29-76)
- F. Located northeast of intersection of Main, Bridge Street Spur. Parking prohibited between 12:00 a.m. & 6:00 a.m. during Snow Emergencies. (12-77)
- G. Northern section located between Main/Mechanic & Access Road, 2 hour parking. (12-20-78)
- H. ACCESS ROAD - Parking Prohibited southerly side from Bridge Street easterly 200 feet. (12-20-78)
BRIDGE STREET EXIT - One hour parking in a 4 space northerly side of Bridge Street Exit road - No Commercial Trucks (3-20-89)
- I. Entire westerly side of Lot C, (excluding spaces in the former Casco Bank drive-thru, but including the easterly side of the island next to the drive thru and the westerly side of the central parking island (amended 11-05-01).

RIVERBANK PARK

Speed limits on all roads in Riverbank park shall be 15 miles per hour. (6-09-69)

SCHOOL PARKING LOTS

Parking Prohibited:

- a. On all school property between 12:01 a.m. & 6:00 a.m. other than vehicles under control of the School Department.
- b. Within 25' of any entrance or exit of any School Building.
- c. On all School property except in area designated by the School Committee, from 6:00 a.m. & 12:00 p.m.
- d. Vocational Drive, from Stroudwater Street in a southerly direction on the westerly side for a distance of 500 feet, and on the easterly side from Stroudwater Street in a southerly direction for a distance of 1350 feet (amended 11-05-01)

SCHOOL PROPERTY

Fire lane/Tow Away Zones: See Section 22-107 of Code of Ordinance. (1-22-1979)

"That Section 22-107, Schedule of Restricted, Prohibited Parking on Publicly owned property, being Schedule XIII of the Traffic Code, be amended by adding the following subsection to read as follows: That "Fire Lane/Tow Away Zones" be established on the following Public School Property as shown on the plot plans of said property:

1. Canal School, Glenwood Avenue
2. Saccharappa School, Alphonse Street
3. Pride's Corner School, Pride Street
4. Warren School, Main Street
5. Forest Street School, Forest Street
6. Rocky Hill School, Bridge Street
7. Congin School, Cumberland Street
8. Old Jr. High School, Main Street
9. Westbrook Jr. High School, Bridge Street
10. Westbrook Sr. High School, Stroudwater Street

The parking of any vehicle, except Fire and/or Police department vehicles, in any such signed Fire Lane/Tow Away Zone is prohibited, and the Police Department is hereby authorized to have said vehicle removed at the owner's expense.

When any such vehicle is towed away as directed by the Police Department, the registered owner of said vehicle shall be given a prompt notice by mail at his or her registered vehicle has been removed. The said owner shall give a right of appeal to the Municipal Officers as to any grievance related to said removal, provided said appeal is filed with the City Clerk within thirty (30) days of the removal of said vehicle.

Amended 1-15-79. That Plot Plan #9 be amended to limit the No Parking/Tow Away Zones on the northeasterly side of the Gymnasium area to both of the emergency fire exits only, and that this plot plan be revised accordingly.

Amended 4-28-80. No Parking/Tow Away Zone - Entire northeast side of Jr. High School Building.

GILES STREET. Fire Lane established at 16 Giles Street. (11-26-07)

WINSLOW STREET. Fire Lane - Both sides for a distance of 55' easterly from intersection with Bridge Street. (11-17-86)

MOTORIZED VEHICLES PROHIBITED

On City Bicycle paths and City Recreation Fields, EXCEPT Police & Municipal Vehicles (7-02-84)

Schedule XIV. Parking Fines

Refer to Master Fine Schedule attached to the Code as Appendix C.

Schedule XV. Angle Parking Zones

| | |
|--------------|--|
| North Street | Angle parking required on northerly side of North Street from a point of 25 feet easterly of Brown Street then easterly a distance of 75 feet. |
|--------------|--|

Schedule XVI. Dead End Streets

| | |
|---------------|--|
| Turner Street | 275 Feet from Saco Street in a westerly direction. (9-21-87) |
|---------------|--|